

*Reserved Judgment*

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**  
**Writ Petition (PIL) No. 217 of 2018**

Jasveer Singh

...Petitioner

Versus

State of Uttarakhand & others

...Respondents

Mr. Abhijay Negi, Advocate for the petitioner.

Mr. S.N. Babulkar, learned Advocate General assisted by Mr. Pradeep Joshi, Standing Counsel for the State of Uttarakhand.

Mr. V.K. Kapruwan, Standing Counsel for the Union of India.

Mr. Ajay Singh Bisht, Advocate for the third respondent.

**Chronological list of cases referred :**

1. AIR 2000 SC 767
2. (1987) 4 SCC 671
3. AIR 2005 SC 2026
4. (1999) 7 SCC 120
5. (2009) 5 SCC 212
6. (1952) 1 SCR 135
7. (1880) 5 AC 214
8. (1965) 3 SCR 536
9. (1989) 2 SCC 691
10. (1986) 2 SCC 679
11. (1995) 6 SCC 749
12. 1952 SCR 583
13. AIR 1954 SC 440
14. (1997) 7 SCC 622
15. (2004) 2 SCC 150
16. (1968) AC 997
17. 1858 EB & E 1024
18. (1998) 1 SCC 226
19. AIR 1987 SC 251
20. (2009) 7 SCC 561
21. (1991) 1 AC 696
22. (1948) 1 K.B. 223
23. (1985) AC 410
24. (1996) 3 SCC 709
25. (1994) 6 SCC 651
26. (2004) 4 SCC 714
27. 1982 (3) All ER 141
28. (2012) 5 SCC 443
29. (2014) 11 SCC 85
30. (2019) 10 SCC 738
31. (2007) 14 SCC 517
32. 2020 SCC Online SC 335
33. AIR 2019 SC 4504
34. (2005) 13 SCC 495
35. (1989) 3 SCR 19
36. (1990) 3 SCC 223
37. AIR 2002 SC 350
38. (1997) 9 SCC 495
39. (2003) 5 SCC 437
40. (2007) 8 SCC 1

41. (1997) 1 WLR 906
42. (1999) 4 SCC 727
43. (1994) 1 WLR 74
44. (1974) I LLJ 172 SC
45. (2001) 2 SCC 386
46. (1977) A.C. 1014, 1026
47. (1997) 7 SCC 463
48. (1971) A.C. 682, 699
49. (2006) 6 SCC 162
50. AIR 1991 SC 1153
51. (1989) 88 LGR 73
52. (1980) 41 P & CR 255
53. (1969) 2 A.C. 147
54. (1925) A.C. 228
55. (2006) 4 SCC 162
56. AIR 1977 SC 2274
57. 1994 Suppl.(1) SCC 160
58. (1975) 2 SCC 649

**Coram: Hon'ble Ramesh Ranganathan, C.J.**  
**Hon'ble Ramesh Chandra Khulbe, J.**

Reserved On : 13.07.2020  
Delivered On : 27.07.2020

**RAMESH RANGANATHAN, C.J.**

The NIT, Uttarakhand, established with great fanfare more than a decade ago in the year 2009, has a sorry tale to tell. Its list of woes seem unending. The location for its permanent campus is embroiled in controversy, and the petitioner alleges that the change of heart of the Central Government, in agreeing to "Sumari" as the location of the permanent campus of the NIT, is the result of a change in the Office of the incumbent in the Ministry of Human Resource Development. Even the poor infrastructure, presently available at its temporary campus in Srinagar, is falling apart. Nature has also not been kind, and the disaster which struck the State of Uttarakhand in June, 2013 took its toll on the temporary campus as well, and a large part of the area was submerged, with several of its buildings completely covered, in silt.

2. As the temporary campus was in two different segments, unconnected internally with each other, the young under-graduate students, studying thereat, had perforce to use the National Highway to travel from one segment of the temporary campus, to another, to prosecute their studies. The tragic incident which took place on 03.10.2018, in which two young under-graduate girl students were the victims of a hit and run accident on

the National Highway (when they were walking to attend classes), resulted in one of them suffering a broken backbone, and the lower part of her body being completely paralyzed. This resulted, justifiably, in the students of the NIT, Uttarakhand taking to the streets. They all went on strike, and vented their anger by holding a *Dharna* at Jantar Mantar, New Delhi seeking a change in the location, of both the permanent and the temporary campus of NIT, Uttarakhand, to a safer place.

3. Disgusted with the prevailing sorry state of affairs, several members of the faculty at NIT, Srinagar resigned and left, and the institute is now functioning without even a single professor in any of its departments. To add to its misery, while several NITs in different parts of the country, were permitted to increase their student intake from the existing sanctioned strength of students, the sanctioned intake of students of NIT, Srinagar was initially reduced by half in the year 2018, and was further reduced in 2019 because of inadequate infrastructure. The last straw on NIT Uttarakhand's back was the ignominy it suffered of having its students (of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> year under-graduate course) being shifted from the temporary Uttarakhand campus at Srinagar to the Satellite Campus of NIT, Jaipur in the State of Rajasthan.

4. While the entire country is undergoing severe hardship and trauma as a result of the COVID-19 pandemic, NIT, Uttarakhand is, possibly, the only institution which may be heaving a huge sigh of relief as fresh admissions to the 1<sup>st</sup> Year under-graduate course, for the academic year 2020-21, has not commenced so far, saving the Institute from having to face, in the immediate future, the daunting task of providing accommodation and other facilities to students admitted afresh in the first year B.Tech course during the academic year 2020-2021.

5. The blame, for the sorry state of affairs in which NIT, Uttarakhand finds itself in, must largely be placed on bureaucratic apathy and the indifference of the respondents to the plight of the Institution and its students and staff. A slew of interim directions issued, from time to time,

by this Court notwithstanding, very little progress has been achieved on any of these fronts. As the interim orders passed by this Court were not heeded, we decided to hear the Writ Petition finally.

6. For a convenient understanding of the problems which NIT faces, and what directions this Court can issue to remedy the situation, we have divided the main part of our order into three distinct parts i.e. (i) issues relating to the temporary campus of NIT, Srinagar; (ii) issues relating to the location of its permanent campus at Sumari; and (iii) the plight of the young girl student of NIT, Srinagar whose future has been destroyed by the hit and run accident, and her being completely paralyzed as a result. Before examining the rival submissions under these heads, it is necessary, in the first instance, to examine the preliminary objections raised by the respondents.

7. Before that the relevant facts. The jurisdiction of this Court has been invoked by an alumni of the National Institute of Technology, Srinagar seeking a writ of mandamus directing the respondents to fulfill their constitutional duties, and immediately shift the current temporary campus of NIT, Uttarakhand, from its present location, to a more suitable location in Uttarakhand; a writ of mandamus directing the respondents to finalize an appropriate location for the permanent campus of the NIT, Uttarakhand, and construct the campus in a time bound manner; a mandamus directing the respondents to bear the entire medical cost of Ms. Neelam Meena till she recovers completely; and to issue any suitable writ, order or direction which this Court may deem fit and proper in the facts and circumstances of the case.

8. The petitioner submits that the National Institutes of Technology, Science Education and Research Act, 2007 (for short the “2007 Act”) was enacted by the Parliament for establishment of NITs; the NIT, Uttarakhand was established in the year 2009 after an amendment was introduced to the 2007 Act adding ten more NITs in the Schedule to the Act; when the Amendment Bill was introduced in Parliament, the then Minister

of Human Resource and Development had emphasized on the need to provide education to the youth as an investment in the future of India; he had stated that the youth were entitled to quality education, the NITs were institutions of quality, but did not have the appropriate governance structure to compete with the rest of the world and create knowledge which alone was the wealth of any nation; the wealth of a nation ultimately rested on the creativity of the student community which could only grow if they were given the freedom to think, and it is only if they are provided the necessary infrastructure that they can actually realise their dreams for themselves and the country; by the time the present Writ Petition was filed, eight years had elapsed since the NIT, Uttarakhand was established as an Institution of national importance; yet half the campus of the NIT, Uttarakhand was being run from the Polytechnic Campus segment of the temporary NIT campus at Srinagar, and the other half from the I.T.I. Institute segment; students were accommodated at nearby hotels, resulting in their having to incur considerable expenditure for their stay; the provisions of Section 6(e) of the 2007 Act which obligates the NIT to provide adequate accommodation, has thereby been violated; even the Director and the Registrar of NIT, Uttarakhand were staying in a local hotel; the faculty accommodation was also woefully inadequate; the infrastructure at the campus of the Polytechnic and the I.T.I. segments did not match the infrastructural status of an NIT; the engineering drawing laboratory was located in a room with crumbling infrastructure, creating great difficulty in accommodating even twenty students, and did not suffice to serve a standard class size of 70; the library was located on the ground floor of a building, above which the girls hostel was located; while students of the NIT, Uttarakhand paid fees at par with students of other NITs, the services extended to them were in sharp contrast to the services extended to NIT students in other colleges; thereby the equality clause, in Article 14 of the Constitution of India, has been violated; and the NIT, Uttarakhand has failed to discharge its duties under the 2007 Act.

9. In the affidavit filed in support of the Writ petition, the petitioner also refers to the grave and serious injuries suffered by a student of NIT, Uttarakhand, Ms. Neelam Meena, who was hit by an over-speeding car; this hit and run incident occurred on 03.10.2018; as the Srinagar Base Hospital was poorly equipped, she was taken more than 106 kms away to Rishikesh where the All India Institute of Medical Sciences is located; and the entire lower part of her body is now completely paralyzed.

10. The petitioner further states that no effective steps have been taken by the respondents to establish a permanent campus for NIT, Uttarakhand; the location of the permanent campus has been caught in the midst of a political battle directly impacting the future of over nine hundred students; the NIT, Uttarakhand has suffered the ignominy of being directed, by the Ministry of Human Resource Development, to reduce their student intake to half, when all the other NITs in the country have been asked to double their intake; Sumari, a place located 15 kms from Srinagar, has been identified as the place where the permanent campus of the NIT, Uttarakhand is to be established; this area is not only prone to severe landslides, but is also characterized by cheed forests, and steep descents, which would render providing necessary infrastructure thereat highly dangerous; the said area is also prone to earthquakes, and is not fit to build a permanent campus for institutions of higher learning such as the NITs; the then Union Minister of Human Resource Development informed the then Chief Minister, by his letter dated 10.02.2017, that the land allocated at Sumari was not suitable to establish a permanent campus of NIT, Uttarakhand; a similar letter was addressed on 12.07.2017, by the Secretary, Ministry of Human Resource Development who had also pointed out that failure of the State Government to allot land for a permanent campus would lead to poor quality education in the NIT, Uttarakhand; even in October, 2018, the Minister of Human Resource Development had informed the Chief Minister that the land at Sumari was unsafe, and after flagging the incident in which two girl students of NIT, Uttarakhand were hit by a speeding vehicle, the Chief Minister was urged to consider shifting the

temporary campus of NIT, Uttarakhand, from its current location in Srinagar, to a better location where there was access to medical facilities; the constant dilly-dallying for the past eight years had caused irreparable damage to several bright students from Uttarakhand; and the National Institute Ranking Framework (NIRF) had certified the hopeless performance of NIT, Uttarakhand, pointing out that it had invested zero funds in executive development programmes, and had filed zero patents in its close to a decade long existence. Reference is made by the petitioner to several judgments to highlight the indifference exhibited both by the Central and the State Governments to the plight of students who are admitted into, and are studying, at the temporary NIT, Uttarakhand campus at Srinagar.

11. Let us now examine the rival submissions, urged by learned counsel on either side, under separate heads.

**I. HAS THE WRIT PETITION BEEN RENDERED INFRACTUOUS BY SUBSEQUENT EVENTS :**

12. Sri V.K. Kaparwan, learned Standing Counsel for the Union of India, would submit that the cause in the writ petition does not survive, and the writ petition has become infructuous; Prayer No. 1 does not survive as, during the pendency of the writ petition, students studying, at the temporary campus of NIT at Srinagar, in the first, second and third year of their B.Tech course, were shifted to the Jaipur Campus of the NIT in Rajasthan; and with regards Prayer No.2, while this Court had, by its order dated 27.03.2019, directed the State Government to identify four locations, and the Union of India to choose one of them as the location for the permanent campus of the NIT, the said order dated 27.03.2019 was recalled subsequently by order dated 07.05.2019.

13. Mr. Ajay Singh Bisht, learned Standing Counsel for the NIT, would submit that in the light of the subsequent events, the writ petition has been rendered infructuous; Relief No. 1 does not survive as the petitioner does not want the temporary campus at Srinagar to be shifted; Relief No. 2

has been partly granted, pursuant to the earlier order of this Court; Relief No. 3 does not survive as full medical reimbursement was provided, besides a fixed deposit of Rs. 25 lacs to the girl-student who suffered grave injuries in the hit and run accident on the National Highway at Srinagar and, consequently, Relief No.3 has been fully addressed.

14. On the other hand Mr. Abhijay Negi, learned counsel for the petitioner, would submit that none of the prayers have been rendered infructuous; the writ petition was filed not to create obstacles in implementing the policy decisions of the Central Government; when the writ petition was filed, the infrastructure available at the temporary campus of the NIT at Srinagar was extremely poor; the prayer, which the petitioner had sought, was for construction of a permanent campus at an appropriate location, i.e. a location which is sufficient and safe; and the prayer, as sought for by the petitioner, is wide enough to bring within its ambit, identification of a proper location for construction of the permanent campus.

15. The contention that the Writ Petition has been rendered infructuous, as the prayers sought by the petitioner no longer survive, is only to be noted to be rejected. The first prayer sought for in the Writ Petition is to shift the current temporary campus of NIT, Uttarakhand from its present location to a more suitable location in the State of Uttarakhand. Shifting of three batches of students, from the temporary campus at Srinagar to the satellite campus of NIT, Jaipur, does not render Prayer No. 1 infructuous, as the relief sought for was to shift the temporary campus to another location within the State of Uttarakhand, and not to the State of Rajasthan. Be it a temporary or a permanent campus of the NIT, Uttarakhand, it can only be located within the State of Uttarakhand and not elsewhere. Prayer No. 1, therefore, survives and, while we may not be inclined to grant the larger relief sought for, we intend considering whether a lesser relief, confined to providing necessary infrastructural facilities at the temporary campus within a specified time frame, can be granted since the petitioner's prayer, that the temporary campus should be shifted

elsewhere, is only because of lack of infrastructure and other facilities at the NIT temporary campus at Srinagar.

16. The second prayer, sought for in the Writ Petition, is to finalize an appropriate location for the permanent campus of NIT, Uttarakhand, and to construct the campus in a time bound manner. Even in the affidavit, filed in support of the Writ Petition, the petitioner's complaint is that the campus at Sumari is not suitable for the permanent campus of the NIT to be located thereat. It is no doubt true that this Court had, in its order dated 27.03.2019, observed that the only possible solution to this vexed problem, which had dogged establishment of the permanent campus of NIT, Uttarakhand, was if the State Government was directed to identify four locations in different parts of the State of Uttarakhand, and the Union of India is then requested to identify the most suitable among these locations for shifting the permanent campus of the NIT, Uttarakhand.

17. It is also true that a recall application was filed, along with the affidavit of the Under-Secretary, MHRD wherein it was stated that the site survey report, the topo report, and a copy of the report of the soil investigation giving contours of the land proposed in Sumari, had been submitted by the Government of Uttarakhand; and the Central Government intended to depute a Site Selection Committee to perambulate the area, and get the DPR prepared in three months. As it was stated that the Government of India would consider according sanction, after consultation with the Ministry of Finance, this Court was of the view that the earlier direction, for four locations to be identified, may not be needed for the present. The earlier order dated 27.03.2019 was recalled awaiting the decision of the Union of India.

18. What was recalled was merely the earlier order passed by this Court on 27.03.2019. The order of this Court dated 07.05.2019, recalling its earlier order, cannot be understood as this Court having given its seal of approval for location of the permanent campus of NIT, Uttarakhand at Sumari. Prayer No. 2 has also not been rendered infructuous.

19. The NIT claims that medical treatment was provided to Ms. Neelam Meena, an under-graduate student of the NIT, she was paid Rs. 25.00 lacs as compensation, and consequently Prayer No. 3 has become infructuous. We must, however, bear in mind that Ms. Neelam Meena suffered this gruesome accident while she was commuting, from one segment of the NIT, Srinagar campus to another, to attend her classes. The backbone of this young girl was broken, and she is said to be completely paralyzed in the lower parts of her body. This accident could have been avoided if only a footpath had been provided for these young students to commute from one part of the NIT campus to the other. The future of this young child has been completely destroyed. The question, whether providing her medical treatment and paying her Rs. 25.00 lacs would suffice, necessitates examination by this Court. It cannot, therefore, be said that Prayer No. 3 has been rendered infructuous. The contention, urged in this regard, therefore necessitates rejection.

## **II. IS FAILURE TO AMEND THE PRAYER FATAL ?**

20. Mr. V.K. Kapruwan, learned Standing Counsel for the Union of India, would submit that the latest report regarding the suitability of the land at Sumari, for location of the permanent campus of the NIT, is the GSI Expert Report after site inspection was caused in June, 2019; this report has not been subjected to challenge in the writ petition; the prayer in the Writ Petition has not been amended to include a challenge thereto; the petitioner has also chosen not to amend the prayer in the writ petition to seek a direction that the location of the permanent campus be shifted from Sumari to any other location; and the Writ Petition is liable to be dismissed on this ground.

21. Mr. Abhijay Negi, learned counsel for the petitioner, would submit that the jurisdiction which this Court exercises, in proceedings under Article 226 of the Constitution of India, is wide; and this Court, in its endeavour to prevent injustice, would not be swayed by hyper technicalities.

22. In support of his submission that failure of the petitioner to challenge the validity of the Geological Survey of India report, by amending the prayer in the Writ Petition, is fatal, Mr. V.K. Kapruwan, learned Standing Counsel for the Union of India, would place reliance on **Commissioner, Bangalore Development Authority vs. S. Vasudeva and others**<sup>1</sup>, wherein the Supreme Court observed that the challenge before the High Court was to the allotment of plots to 34 persons who were stated to be the members of the society; the High Court not only came to the conclusion that bulk allotment of land was not permissible, but had also directed the constitution of a committee to go into all allotments made by the BDA; the effect of this was that the committee, which was sought to be constituted, was empowered to carry out a roving and fishing inquiry with regards allotment of land made by the BDA, since the time it was constituted in the year 1976; there was neither any prayer in the writ petition to this effect, nor was any affidavit filed before the High Court in relation to such allotment of land to the society and others; the petitioner had not chosen to enlarge the scope of the writ petition by amending his petition; and, therefore, the High Court was not justified in issuing the type of directions which it did.

23. Reliance placed on the aforesaid judgment is of no avail. It was wholly unnecessary for the petitioner to amend his prayer to include a challenge to the validity of the report of the Geological Survey of India for, from the facts which shall be detailed hereinafter, the Central Government had decided on Sumari as the permanent campus of NIT, Uttarakhand, with a view “**to end the impasse**” long before then. The fact that such a decision was taken by the Government of India has been stated in the counter-affidavit dated 03.05.2019, filed on behalf of the Central Government, which was more than a month prior to when the Geological Survey of India caused an inspection of the land in June, 2019. In any event, the GSI report is merely a report, after examining which the Central Government was required to take a conscious decision on whether or not to locate the permanent campus of NIT, Uttarakhand at Sumari. What is

impugned in the Writ Petition is the decision to locate the permanent campus at Sumari. As the decision of the Government to locate the permanent campus at Sumari is under challenge, it matters little whether or not the validity of any particular report is subjected to challenge. The contention, urged on behalf of the respondents regarding the maintainability of the Writ Petition on this score, must also fail.

### **III. TEMPORARY CAMPUS OF NIT, UTTARAKHAND AT SRINAGAR:**

24. Mr. Abhijay Negi, learned counsel for the petitioner would submit that, due to the lack of interest exhibited both by the Central and the State Governments, the future of several hundreds of students, who passed out from NIT, Srinagar, has been destroyed; not only was the infrastructure provided to them, at the temporary campus at Srinagar, woefully inadequate, they were also deprived of proper education as a result of lack of adequate faculty to impart learning to them; despite repeated directions of this Court, very little progress has been achieved with regards providing the required infrastructure at the temporary campus; the land at Resham Farm had been transferred by the State Government, to the NIT, on 17.01.2019; though more than one and a half years has since elapsed, nothing has changed on ground; the land made available by the State Government has not been put to use so far; the inaction of the respondents is evident from the fact that no infrastructure facilities have been provided, at the temporary campus at Srinagar, for the past one and a half years; the respondents have admitted that the hostel facilities are grossly insufficient; and several batches of students were cooped up in such hostels for several years.

25. On the complaint regarding lack of infrastructural facilities at the temporary campus at Srinagar, Sri Pradeep Joshi, learned Standing Counsel, would draw our attention to the counter-affidavit filed by the State Government to submit that the land at Resham Farm was handed-over to the NIT to provide necessary infrastructure for the NIT campus; the cost of construction is to be borne by the Central Government; and progress could

not be achieved, since necessary funds are awaited from the Central Government.

**(i) EXCLUSIVE RESPONSIBILITY OF THE CENTRAL GOVERNMENT TO MAINTAIN STANDARDS OF HIGHER EDUCATION :**

26. Chapter II of the 2007 Act relates to the Institutions (NITs), and Section 6 thereof relates to the power of the Institutes. Section 6(1) stipulates that, subject to the provisions of the 2007 Act, every NIT shall exercise the following powers and perform the following duties namely: (a) to provide for instructions and research in such branches of engineering and technology, management, education, sciences and arts, as the Institute may think fit, and for the advancement of learning and dissemination of knowledge in such branches. Clause (e) of Section 6(1) requires the NIT to establish, maintain and manage halls and hostels for the residence of students. Under clause (f) of Section 6(1), the NIT is obligated to supervise and control the residence of the Institute and to make arrangements for promoting the health, general welfare and cultural and corporate life of its students. Clause (h) of Section 6(1) requires the NIT to institute academic and other posts, with the prior approval of the Central Government, and to make appointments thereto. Under Section 6(1)(j), the NIT is required to deal with the property, vested in it, for advancing the objects of the Institute. Clause (l) of Section 6(1) of the 2007 Act obligates the NIT to co-operate with educational or other institutions in any part of the world having objects wholly or partly similar to those of the Institute by exchange of teachers and scholars, and generally in such manner as may be conducive to their common objects.

**(ii) IT IS THE DUTY OF THE CENTRAL GOVERNMENT TO ENSURE MAINTENANCE OF STANDARDS IN HIGHER AND TECHNICAL EDUCATION:**

27. The NIT can only discharge the duties and obligations placed on it, by the aforesaid clauses of Section 6(1) of the 2007 Act, if necessary funds are made available, and the required assistance is provided, to them by the Central Government. Power is conferred on the Government of India to ensure that the required standards of higher education, including

scientific and technical education, are maintained. It is the exclusive responsibility of the Central Government to evaluate, harmonise and secure proper relationship to any project of national importance, such as the National Institute of Technology, Uttarakhand. Coordinated efforts between the Centre and the State in matters of higher education, ensuring maintenance of proper standards, is of paramount importance to national progress. (**Osmania University Teachers Association vs. State of Andhra Pradesh and another**<sup>2</sup>). An institution, established for promotion of education in higher branches of learning, should have colleges, buildings and other facilities of the standards required of Institutions of excellence. Facilities for imparting instructions and research, provision for residence, and a certain standard of instructions being providing for graduate and post-graduate levels of study are necessary attributes of such an institution. This pre-supposes the existence of a proper campus, classrooms, lecture theatres, libraries, laboratories, offices, besides playgrounds and sport facility for overall development of the personality of students. (**Prof. Yashpal and another vs. State of Chattisgarh and others**<sup>3</sup>).

28. The standard of education in an institution depends on various factors like (i) the caliber of the teaching staff; (ii) a proper syllabus designed to achieve high levels of education in a given span of time; (iii) the student-teacher ratio; (iv) equipment and laboratory facilities; (v) caliber of the students admitted; (vi) adequate accommodation in the institution; (vii) the standard of examinations held, including the manner in which the papers are set and examined; and (viii) evaluation of practical examinations. (**Prof. Yashpal**<sup>3</sup>; and **Dr. Preeti Srivastava and Anr v. State of M.P. and Ors**<sup>4</sup>). Higher and technical education involves a continuous interaction between teachers and students. The base of teaching, the level to which teaching can rise, and the benefit which the students ultimately receive, depends as much on the caliber of the students as on the caliber of the teachers and the availability of adequate infrastructural facilities. (**Prof. Yashpal**<sup>3</sup>; and **Dr. Preeti Srivastava**<sup>4</sup>).

29. The Secretary, MHRD, by his letter dated 11.12.2018 addressed to the Chief Secretary, Government of Uttarakhand, requested the State Government to hand-over the Resham Farm (Sericulture Farm) lying next to the current temporary campus at Srinagar for development of hostels for the remaining students in the next 18-24 months; and till such time that the suggested suitable facilities could be created, it would not be possible to wind up the satellite campus at NIT, Jaipur. He further stated that the issue would be resolved, if both the Central and the State Governments worked together towards protecting the interests of the students, institution and academics, that an institution like the NIT was expected to deliver.

30. In its order dated 07.05.2019, this Court noted that, in order to upgrade the existing facilities of the NIT temporary campus, located at I.T.I. Campus, Srinagar, the Government of Uttarakhand had handed over the Sericulture Farm ad-measuring 08 acres to the N.I.T; the State Government had earlier handed over the entire land of I.T.I., Srinagar to the N.I.T. Uttarakhand for creating additional facilities; the Director, IIT Roorkee had been directed to assign the work to a team of architects and engineers of I.I.T. Roorkee, for preparing a Master Plan and a Detailed Project Report for 800 students, so that all the desired facilities are put in place at the existing temporary campus for facilitating students.

31. Having noted that the academic year 2019-2020 would commence from 15.07.2019, and it was necessary that the required infrastructural facilities are established at Srinagar to ensure that the first year students are suitably accommodated, this Court opined that it was necessary that the IIT Roorkee be asked to complete the task entrusted to them, of preparing a Master Plan and D.P.R, at the earliest, so that all the desired facilities are put in place at the existing temporary campus, before students are admitted in the first year course in July, 2019. The Director, IIT Roorkee was requested to submit a report to the Court, furnishing details regarding preparation of a Master Plan and a D.P.R, and the time frame within which the required infrastructural facilities, to be provided to

the first year students who are to be admitted into N.I.T. at Srinagar, would be completed.

**(iii) IIT ROORKEE REPORT DATED 22.06.2019: ITS CONTENTS:**

32. In its elaborate report dated 22.06.2019 the Committee, constituted by IIT, Roorkee, for preparation of a master-plan for the temporary campus of the National Institute of Technology, Uttarakhand, Srinagar, noted that the work of land survey was taken-up first; this was followed by preparation of a master-plan; and thereafter cost estimate was prepared. The said report records the proposed additional infrastructure requirements, for the temporary campus of NIT, Uttarakhand, in the form of a table which reads as under:

Sl. No.	Infrastructure Type	Existing Area (approx.. in sqm)	Additional area requirement (approx., in sqm.) (Considering 800 students)
1	Classrooms	1300	500
2	Laboratories	5200	3600
3	Library / smart class rooms	810	1000
4	Hostels	8500	7500
5	Recreation facilities	1200	2000
6	Administration	1000	500
	<b>Total</b>	<b>18010</b>	<b>15100</b>

33. The report, thereafter, states that the new proposed campus of NIT Uttarakhand comprises of two land pockets-the first adjacent to the existing ITI campus; this area has silt deposits, all around, which got deposited in the aftermath of the floods of year 2013; as a result, a few buildings had their ground-floor completely submerged in silt deposits; the second piece of the newly proposed land was the existing Resham (Sericulture) Farm; and a narrow passage separated the two pieces of land. The committee report, thereafter, details the reconnaissance survey conducted by it, its onsite discussions, etc.

34. On the issue of preparation of the master-plan, under the head 'Site Profile and Analysis', the report records that the current temporary campus in ITI comprises of three buildings being used mostly for official and academic work, while the hostels and other common facilities are

mostly located in the polytechnic college campus of NIT; because of this separation, connectivity of various student activities was a huge problem considering the busy NH-58 which is currently used for commuting between the two campuses; the newly proposed piece of land would solve this problem to a great extent; a few private buildings and a separating road between the two new pieces of land made the master-planning work, for making an integrated campus, challenging; and certain abandoned and non-functional buildings were also present in the sites which needed to be demolished.

35. On the 'Design Brief and Area Requirement', the report states that the Resham Farm land is believed to be better than ITI land; the new piece of land (Resham farm) located adjacent to the ITI campus is envisaged for additional administrative requirement only, while the entire academic activities and hostels are proposed on the Resham Farm; the remaining newly allocated ITI land may be used for open area activities; the Resham Farm is a larger chunk of land which would host other infrastructural facilities; it is proposed to have the Girls and Boys hostels, additional laboratories, class-rooms and other central academic amenities namely library, computer centre, workshop, etc.; a multipurpose ground is also proposed on this piece of land; and the circulation spaces, parking, and spaces of services have been planned to the extent required.

36. The report then states that the main requirement of the stakeholders (faculty, staff and students of NIT) was to have separation between academic / administrative and non-academic / administrative activities, apart from having both of them as per the requirements; and, as the campus is temporary in nature, it needs to be built at the earliest. The Committee took into account various para-meters in providing the design for the temporary campus at Srinagar. The Report then states that the two pieces of land and development would have two separate entry gates for vehicular traffic interconnected by a pedestrian access in the rear end of the site; and there would be a pedestrian walkway on the front side connecting all the three campuses i.e. ITI, Resham Farm and Polytechnic. On the

‘Structural Aspects and Cost Estimates’, the report records that the existing PEB buildings in ITI campus built just a few years ago has already started showing symptoms of distress; a detailed preliminary cost estimate is provided with analysis of rates with two different options. In terms thereof, while one option would involve an estimated expenditure of Rs. 74.23 crores, the second option involves the estimated expenditure of Rs. 52.45 crores.

**(iv) CENTRAL GOVERNMENT WAS REQUESTED TO EXPEDITE APPROVAL OF THE DPR:**

37. Pursuant thereto, the Additional Chief Secretary, Technical Education, Government of Uttarakhand, after referring this report to IIT, informed the Additional Secretary, MHRD, Government of India by his letter dated 27.06.2019, that two options had been proposed entailing costs of Rs. 74.23 crores and Rs. 52.45 crores with estimations based on the Delhi Schedule of rates; and it would be in interest of students and the State if a decision, regarding the submitted DPR, is expedited. Despite more than a year having elapsed since then, funds are still awaited, and the situation on the ground remains as it is.

**(v) DETAILS OF THE INFRASTRUCTURE PRESENTLY AVAILABLE AT THE TEMPORARY CAMPUS OF NIT AT SRINAGAR:**

38. In the Supplementary Counter-Affidavit dated 12.03.2020, the Registrar, NIT, states that NIT Uttarakhand was continuously approaching the State Government to hand-over the land of Resham Farm measuring 8 acres and the entire left-over, catastrophe inflicted ITI land measuring 2.218 hectares (effectively about 2.75 acres); both these pieces of land were located in close proximity to the existing temporary campus of NIT Srinagar; and finally the State Government had ordered transfer of these pieces of land. It does appear from the enclosed letters that the subject land of the Resham farm was handed over to the NIT Srinagar only on 25.02.2020.

39. With regards adequacy of infrastructure at the Srinagar temporary campus, the supplementary counter-affidavit states that the

campus is located at two places at Srinagar (a) one part of the campus is housed in the premises of the Government Polytechnic, and (2) the other part is located in the abandoned land of catastrophe inflicted ITI campus; the Institute's buildings, at the Polytechnic campus, house departments related to Science and Humanities, class-rooms, library, dispensary, server-room, auditorium, hostels and ad hoc playground; the catastrophe inflicted Government ITI land of about 2 acres was reclaimed by the NIT Uttarakhand to extend its temporary campus by fabricating three new building blocks to, primarily, accommodate laboratories of all engineering branches, faculty and staff offices and an administrative section; the Government of Uttarakhand had handed over the Sericulture (Resham) Farm admeasuring 8 acres, and the left-over land in ITI which is effectively 2.75 acres; both these pieces of land are located in proximity to the existing temporary Polytechnic and ITI campuses; the land allotted for the temporary campus is not a continuous piece of land; and it is divided into three parts because of either public roads or private land in between.

40. The supplementary counter-affidavit, thereafter, details the present status of the infrastructural facilities existing at the temporary campus at Srinagar vis-à-vis its adequacy to cater to the needs of NIT in accordance with the MHRD Office Memorandum dated 03.06.2019. The facilities at the NIT Uttarakhand temporary campus vis-à-vis MHRD norms are detailed in Table-A, which reads as under:

Sl. No.	Category of infrastructure	Prescribed Plinth Area for a Campus, as per MHRD Norms (per Student) (Sqm)	Actual Plinth Area in Temporary Campus (Sqm)	Actual Plinth Area available in Temporary Campus for Current Academic Year (2019-20) (per student for 876 students) (sqm)	Actual Plinth Area available in Temporary Campus for Academic Year (2020-21) (per Student for 789 Students) (sqm)
1	Academic ----- Administration ----- Library	30 Sqm	968 Sqm ----- 1000 Sqm ----- 300 Sqm	6.18 Sqm	6.86 Sqm

	----- Laboratory and Workshops		----- 3147 Sqm		
2	Student hostels	35 Sqm	6000 Sqm	6.85 Sqm	7.60 Sqm
	----- Faculty and Staff Quarters		----- 0 Sqm		
3	Sports Facility & Common Facilities	10 Sqm	1550 Sqm	1.77 Sqm	1.96 Sqm
	Total	75 Sqm	12965 Sqm	14.80 Sqm	16.43

41. The counter-affidavit, of the Registrar NIT dated 12.03.2020, further states that both Government ITI land and a part of the Resham Farm have about 3 to 4 meters silt deposits; a significant portion of these land pieces fall either under or very close to the 100 meters NGT guidelines from the banks of Alakhnanda river; the existing infrastructural facilities, at the temporary campus, Srinagar, are 78% short of the norms for a Campus as per the MHRD Master Circular; and almost 70% of the existing infrastructure, are in the form of pre-fabricated temporary structures.

42. With regards students intake and the expected students' strength in the Institute, the said counter-affidavit states that the annual intake of students from academic year 2019-20 onwards for B.Tech is 100, M.Tech 95 and Ph.D. 40 students. The details thereof are given in Table-B, which reads as under:

Programme / Year	Number of students			
	Current AY (2019-20)	In AY (2020-21)	In AY (2021-22)	In AY (2022-23)
B.Tech I Year (05 Branches)	91	100	100	100
B.Tech II Year (05 Branches)	146	91	100	100
B.Tech III Year (05 Branches)	276	146	91	100
B.Tech IV Year (05 Branches)	234	276	146	91
<b>Total B.Tech Students (05 Branches)</b>	<b>747</b>	<b>613</b>	<b>437</b>	<b>391</b>

43. Tables C and D contain details of the available hostel facilities with proposed single / double occupancy and available mess / dining facilities with student capacity. They read as under:

Hostel No.	For	No. of Rooms	Student Capacity of Rooms	Dining Area	Cooking Area
1	Boys	22	15X1 =+ 7X2=	No	No
2	Boys	22	22X2=44	Yes	Yes
4	Boys	18	18X2=36	No	No
5	Boys	36	36X2=72	Yes (capacity 280 students)	No
7	Boys	14	14X2=28	No	No
Total for Boys Hostel		112	209		
3	Girls	22	22X2=44	No	No
6	Girls	12	12X2=24	No	Yes
Total for Girls Hostel		34	68		

Mess Facility	
Number	Capacity
01	280

44. Table-E furnishes details of the available class-rooms along with the seating capacity. Table-F furnishes details of the existing laboratories of various departments. Table-G gives details of the existing sports infrastructure available at the temporary campuses. The counter-affidavit then states that the Union Cabinet had approved an annual intake of 30 students in each of the three branches i.e. Computer Science and Engineering, Electronic Engineering, Electrical Engineering from the Academic Session 2010-11; the B.Tech (Mechanical) course, with an intake of 30 students, was to be introduced in the third year, and the B.Tech (Civil) course was to be introduced in the fourth year with a student strength of 60; M.Tech courses were also to be introduced by the NIT Uttarakhand in the sixth year after establishment; however, as per the Board's recommendations and the Senate resolution, intake of students was reduced by 50% in each branch of the B.Tech programme from the academic session 2018-19 onwards; and the annual intake for B.Tech programme was further reduced to 100 students from the academic session 2019-20 onwards, in compliance with the Senate recommendations.

45. It appears, from the enclosed table, that, as against the total 300 sanctioned seats in the B.Tech course upto year 2017, its intake was reduced to 50% from the year 2018 i.e. to 150 seats. It was again reduced to 100 seats in the year 2019, against which only 91 students were admitted. Similarly, as against a total of 75 seats in the M.Tech Course in the year 2018, only 48 students were admitted; and, as against a total of 95 Ph.D sanctioned seats in the year 2019, only 41 students were admitted. Similarly, in years 2019-2020, admission was given only to 24 and 16 students, in the M.Tech and Ph.D courses, respectively.

46. What is even more disconcerting is the lack of a proper faculty at the NIT temporary campus at Srinagar. The table, furnished regarding the present sanctioned strength of teaching posts and vacant positions, reads as under:

<b>Total Sanctioned Faculty Posts</b>		<b>86</b>
Faculty in position	Professor	NIL
	Associate Professor	05
	Assistant Professor	54
	Total	59
Vacant Posts	Professor	05
	Associate Professor	04
	Assistant Professor	18
	Total	27

47. The affidavit concludes by stating that one Professor i.e. Professor Virendra Kumar Sharma had joined the Institute on 09.07.2013 in the Department of Electrical Engineering; on his resignation, he was relieved from the Institute on 08.07.2014; another Professor i.e. Professor Ram Bahadur Patel joined the Institute on 07.07.2018 in the Department of Computer Science and Engineering; on his resignation, he was relieved from the Institute on 08.07.2019; and, presently, no Professor is serving in the Institute, though the Institute has a requirement of five professors as notified by the Advisory Committee on Faculty Recruitment in its meeting dated 07.02.2020.

48. It is evident from the afore-extracted table that, as against the total sanctioned strength of five, all the five posts of Professors lie vacant; of the 9 posts of Associate Professors, four are vacant; and of the 72 posts of Assistant Professors, 18 are vacant. That an institution of national importance, such as an NIT, should not even have a single Professor reflects poorly on the standards of education imparted thereat, and on the Institute's inability to attract and retain faculty, which appears largely because of the inadequate infrastructural facilities at the temporary campus.

49. With respect to the temporary campus at Srinagar, the Additional Counter-Affidavit, of the Under Secretary, MHRD dated 15.03.2020, states that NIT Uttarakhand started its first academic session from the academic year 2010-11 onwards with an annual intake of 90 students (i.e. 30 students in each of its three branches) as approved by the Union Cabinet; consequent upon its incorporation under the 2007 Act, the Senate of NIT is empowered, under Section 15 and Statute 8 of the First Statute framed under the said Act, to review the students' intake (year-wise and subject-wise); all NITs, across the country, are governed by similar provisions for deciding their academic matters; NIT Uttarakhand is fully funded by the Central Government, and any kind of financial support, required for the temporary campus or the permanent campus, would be provided by the Central Government as per relevant rules after following due procedures. The counter-affidavit is silent as to when the required funds for execution of the detailed project report for providing the required infrastructure facilities at the temporary campus at Srinagar, will be released.

50. It is only after the tragic accident of 3<sup>rd</sup> October, 2018 that the pathetic infrastructural facilities, available at the temporary campus of NIT, Srinagar, were highlighted both in the media and elsewhere, giving rise to the clamor that its location be shifted. This prompted the State Government to act, and to eventually hand-over the Resham (Sericulture) farm located between the two sites (ITI and Polytechnic campuses) where the temporary campus of NIT, Srinagar is located. These two sites, i.e. the ITI and the

Polytechnic campuses, are separated, substantially, by the Resham (Sericulture) farm and, while hostel accommodation was provided in one of the campuses, the laboratories and other academic infrastructure was located in the other. As these two sites were not internally inter-connected, and there was no path-way for students to travel from one of these locations to another, they had, perforce, to use the National Highway to commute to attend classes and come back to their hostels, which resulted in this tragic accident on 3<sup>rd</sup> October, 2018.

51. Though the Resham (Sericulture) farm has been handed-over by the State Government to the NIT, the said area, where the internal pathway is proposed to be laid interconnecting the hostels with the academic infrastructure, remains as it was earlier, since the detailed project report submitted to the Central Government as early as in June, 2019, still awaits its approval. As a large part of the temporary campus, including several of its buildings, are buried in silt which came to be deposited as a result of the huge floods which struck large parts of the State of Uttarakhand in June, 2013, the present facilities at the temporary campus is, hardly, sufficient to cater even to one batch of students i.e. students of any one year of the under-graduate course. For the academic year 2018-19, except for the final year B.Tech students, the first, second, and third year undergraduate students were, as noted hereinabove, shifted to the satellite campus of NIT at Jaipur in the State of Rajasthan. However, for the academic year 2019-20, NIT Uttarakhand admitted students in the first year of the undergraduate course. As the final year B.Tech students alone remained in the Srinagar campus during the academic year 2018-19, and they passed out at the end of the said academic year, NIT Uttarakhand had only to accommodate the newly selected first year students of the B.Tech course during 2019-20, as students of the other three years continued to prosecute their studies at the satellite campus of NIT, Jaipur. However, for the academic year 2020-21, which should have commenced in July, 2020, admission of a fresh batch of the first year students would have resulted in the NIT Srinagar being required to provide facilities, even if it be the bare minimum, to under

graduate students of two years i.e. the students of the first and the second year B.Tech course, besides the M.Tech and Ph.D. students who were always prosecuting their studies at Srinagar.

52. When we asked Sri Ajay Singh Bisht, learned Standing Counsel for the NIT, as to how they propose to accommodate students of the first and the second year B.Tech course, learned counsel would submit that the NIT intends to treat both the M.Tech and Ph.D. students as day-scholars so that they can reside outside and attend classes at the Institute, and the hostel accommodation provided to them can, instead, be provided to the second year B.Tech students. He would also state that, while all the posts of Professors are no doubt vacant, and a substantial number of other faculty posts are also unoccupied, remedial action has been initiated, and an advertisement has been issued inviting applications to fill up these posts.

53. The material placed by the petitioner on record shows that the students from all four years of the undergraduate engineering courses were, prior to 2018-19, prosecuting their studies at the Srinagar campus with a toilet-student ratio of 1:50 i.e. 50 students had to do with using one toilet. We are referring to this alone to highlight the complete lack of facilities in an Institution, which Parliament has declared, by the 2007 Act, to be an Institution of national importance. If this be the plight of an Institute of national importance, the future of higher education does not appear bright.

(vi) **THE 2007 ACT OBLIGATES THE CENTRAL GOVERNMENT TO PROVIDE FUNDS FOR INFRASTRUCTURAL FACILITIES TO BE ESTABLISHED AT THE TEMPORARY CAMPUS:**

54. The next question which necessitates examination is as to what this Court can do, within the limits of its power of judicial review under Article 226 of the Constitution of India. There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make the duty of the person in whom the power is reposed,

to exercise that power when called upon to do so. (**Destruction of Public and Private Properties, In Re vs. State of Andhra Pradesh and others**<sup>5</sup>; **Commissioner of Police v. Gordhandas Bhanji**<sup>6</sup>; and **Julius v. Lord Bishop of Oxford**<sup>7</sup>).

55. The statutory duties, which NIT is obligated to discharge under Section 6 of the 2007 Act, needs monetary assistance from the Government of India. Though IIT Roorkee submitted its report dated 22.06.2019, proposing two different alternatives for providing the required infrastructure facilities at the temporary campus at Srinagar, and consequent thereto a letter was addressed by the Addl. Chief Secretary, Government of Uttarakhand on 27.06.2019, no action appears to have been taken thereafter by the Government of India for the past one year to provide the required funds, resulting in the NIT not being able to even lay an internal pathway for students to travel, and in their still being forced to take the National Highway to commute from one campus to another. What should we do in such a situation?

(vii) **ARTICLE 226 CONFERS WIDE POWERS ON THE HIGH COURT TO REACH INJUSTICE :**

56. Article 226 is couched in comprehensive phraseology and it, ex-facie, confers wide powers on the High Courts to reach injustice wherever it is found. The Constitution has, designedly, used wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. The High Courts can issue directions, orders or writs, other than the prerogative writs, to mould the reliefs to meet peculiar and complicated requirements. (**Dwarkanath v. ITO**<sup>8</sup>; **Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani**<sup>9</sup>; **Comptroller and Auditor-General of India v. K.S. Jagannathan**<sup>10</sup>; and **Destruction of Public & Private Properties**<sup>5</sup>). In **B.C. Chaturvedi v. Union of India**<sup>11</sup>, the Supreme Court held that the power to do complete justice also inheres in every court, not to speak of a court of plenary

jurisdiction like a High Court. This power is, however, not as wide as the Supreme Court has under Article 142.

57. The writs, referred to in Article 226, are intended to enable the High Court to issue them in grave cases where bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of principles of natural justice, or refuse to exercise a jurisdiction vested in them, and such act, omission, or excess has resulted in manifest injustice. (**Veerappa Pillai v. Raman & Raman Ltd**<sup>12</sup>; and **T.C. Basappa v. T. Nagappa**<sup>13</sup>).

**(viii) WRIT OF MANDAMUS: ITS SCOPE:**

58. The petitioner seeks a writ of mandamus to shift the temporary campus of NIT at Srinagar to any other place. While we do not consider it appropriate to grant such a relief, we are satisfied that the statutory obligation cast by Section 6 of the 2007 Act needs to be enforced and the respondents should, instead, be called upon to provide the required infrastructure at the NIT temporary campus at Srinagar. On the scope of such a writ, it is necessary to note that mandamus, a discretionary remedy under Article 226 of the Constitution, is issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. A statutory duty may either be directory or mandatory. What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the “duty” has been set out. In the performance of this duty, if the authority in whom the discretion is vested under the statute does not act, the Court would intervene and issue a mandamus to that authority to exercise its discretion. (**Mansukhlal Vithaldas Chauhan v. State of Gujarat**<sup>14</sup>).

59. A writ of mandamus is issued against a person who has a legal duty to perform, but has failed and/or neglected to do so. Such a legal duty emanates from either the discharge of a public duty or by operation of law. The object of mandamus is to prevent disorder from a failure of justice, and is granted where justice, despite being demanded, has not been granted. (**Union of India v. S.B. Vohra**<sup>15</sup>). An order of mandamus can only be made

against the concerned authority if it is shown that, in some way, he acted unlawfully. A court could make an order if it were shown (a) that he failed or refused to apply his mind to or to consider the question or (b) that he misinterpreted the law or proceeded on an erroneous view of the law or (c) that he based his decision on some wholly extraneous consideration or (d) that he failed to have regard to matters which he should have taken into account. (**PADFIELD AND OTHERS vs. MINISTER OF AGRICULTURE, FISHERIES AND FOOD AND OTHERS**<sup>16</sup>).

60. An order of mandamus will issue to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right. (**Halsbury's Laws of England, 4th Edn., vol. I, para 89**; and **K S. Jagannathan**<sup>10</sup>). The Court has the power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the provisions of a statute. (**Mayor of Rochester v. Regina**<sup>17</sup>; and **K S. Jagannathan**<sup>10</sup>).

61. The High Court, exercising jurisdiction under Article 226, has the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a policy decision of the government, or has exercised such discretion *malafide* or on irrelevant considerations or by ignoring relevant considerations and material or in such a manner as to frustrate the object of conferring such discretion, or the policy for implementing which, such discretion has been conferred. In all such cases, and in any other fit and proper case, a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel

the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority (**K S. Jagannathan<sup>10</sup>**).

**(ix) POSTIVE MANDAMUS: WHEN CAN IT BE ISSUED ?**

62. Absence of the required infrastructure, and the sanctioned faculty, at the temporary campus has adversely affected even the normal functioning of the Institution. The several directions issued by this Court, in this Public Interest Litigation Writ Petition, have not elicited the desired response. The only manner in which the statutory obligations placed both on the Central Government and the NIT, under Section 6 of the 2007 Act, can be enforced is if a positive mandamus is issued. In a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion. (**K.S. Jagannathan<sup>10</sup>**). The situation in which a positive mandamus, to do a particular act in a particular way, can be issued may be broadly classified. First are the broad mandamus cases where the court may issue a positive mandamus to enforce the law. Positive directions can be issued where there is a power coupled with a duty. (**Destruction of Public and Private Properties<sup>5</sup>**; and **Vineet Narain & others v. Union of India<sup>18</sup>**).

63. Since the present infrastructure hardly suffices even to cater to the basic needs of students of one year of the undergraduate engineering course, and admission of a new batch of students into the first year undergraduate course in the NIT, Uttarakhand, in the academic year 2020-21, would result in two batches of undergraduate students, (both first and second years), prosecuting their studies at the temporary campus, the present infrastructure needs immediate upgradation. Though the IIT, Roorkee had submitted its report, proposing two different alternatives, for providing infrastructural facilities at the NIT temporary campus at Srinagar, along with a detailed project report, and thereafter the State Government had requested the Central Government, by letter dated 27.06.2019, to provide the required funds, no action has as yet been taken by the Central

Government to release the required funds, though more than one year has since elapsed.

64. In the Additional Counter-Affidavit dated 15.03.2020, the Under Secretary, MHRD, has expressed the Central Government's intent to provide necessary funds towards the infrastructural facilities required at the temporary campus of NIT at Srinagar. The said Additional Counter-Affidavit does not, however, state when the funds, sought for, will be released. Though more than four months have elapsed since the Additional Counter-Affidavit dated 15.03.2020 was filed on behalf of the Government of India, we are informed that the required funds, for providing the minimum required infrastructural facilities, have not yet been released. In the absence of funds being provided in this regard, the NIT, Uttarakhand has expressed its inability even to provide an internal path way connecting students' hostels with the academic area of the NIT, resulting in students still having to continue to use the National Highway to commute between one segment of the temporary campus of the NIT to another. Since these young undergraduate engineering students continue to use the National Highway to commute from one segment to another, to prosecute their studies, one can only hope that the tragic accident, which took place on the National Highway on 03.10.2018, does not recur.

65. Despite our earlier interim orders, wherein we had expressed the need for the respondents to show urgency in providing the required infrastructure, the situation remains as it is for the past more than a year. Asking the Government of India to consider the matter, and take a decision thereafter, would only take time and the students, admitted into the NIT, being forced to live in, virtually, uninhabitable conditions, and the post-graduate students being forced to reside outside. Even after funds are released, the process of inviting bids, awarding the work, commencing construction and its completion will take time, and till then students, to be admitted in the academic year 2020-21, will have to put up with the inconvenience caused as a result. Unless a positive mandamus is issued, NIT, Uttarakhand would, during the academic year 2021-22, face the

daunting task of having to accommodate undergraduate students of three years which, in the present situation in which NIT, Uttarakhand finds itself in, is almost impossible.

66. We consider it appropriate, therefore, to issue a mandamus directing the Government of India to forthwith, and in any event within three months from the date of production of a certified copy of this order, consider the detailed project report and release the funds required to provide the necessary infrastructural facilities at the temporary campus of NIT at Srinagar. As soon as funds are released by the Government of India, NIT shall forthwith initiate steps for inviting bids for construction of the buildings, and to provide the additional infrastructural facilities required at the temporary campus of NIT at Srinagar, including laying of an internal road at the earliest. All necessary steps shall be taken to ensure that the construction is completed with utmost expedition and in any event before the beginning of the academic year 2021-22 i.e. on or before 1<sup>st</sup> July, 2021.

**IV. CHOICE OF SUMARI AS THE LOCATION FOR THE PERMANENT CAMPUS OF NIT UTTARAKHAND: IS THE DECISION VALID ?**

67. Mr. Abhijay Negi, learned counsel for the petitioner, would submit that the wednesbury test of reasonableness has not been satisfied in choosing “Sumari” as the location for the permanent campus of NIT; the safety of students, and the teaching and other staff at NIT, should have been the primary concern in identifying a suitable location to establish the permanent campus of NIT; none of the reports make any reference to the safety of students and staff at all; in its counter-affidavit dated 03.05.2019, the contents of which were noted by this Court in its order dated 07.05.2019, the Central Government had stated that they had agreed to locate the permanent campus at Sumari only to “end the impasse”; they had also stated that the construction appeared to be possible in three clusters separated by hills; the GSI report shows that the area is affected by landslides and first order drains; and, since the safety of students and staff is involved, the casual manner in which the Central Government had approved the land at Sumari, as the location of the permanent campus of NIT,

Uttarakhand only “to end the impasse”, does not pass the Wednesbury test of reasonableness; and necessitates this Court’s intervention.

68. On the other hand Mr. V.K. Kapruwan, learned Standing Counsel for the Central Government, would submit that the policy decision taken by the Central Government, to locate the permanent campus of the NIT at Sumari, does not necessitate interference in proceedings under Article 226 of the Constitution of India as held in **State of M.P. vs. Nandlal Jaiswal and others**<sup>19</sup>; the decision to locate the permanent campus of Sumari is a policy decision of the Central Government; since no malafides are alleged, and both the State Government and the Central Government had taken an uniform decision in a fair and transparent manner, no interference is called for regarding such a policy decision; the site identification and selection exercise was undertaken by the State Government; and the site so selected was found suitable by the Geological Survey of India and was, therefore, accepted both by the State and the Central Governments. Learned Standing Counsel would place reliance on **Dwarka Nath**<sup>8</sup>; **Villianur Iyarkkai Padukappu Maiyam vs. Union of India and others**<sup>20</sup>; and to the affidavit of the Central Government dated 15.03.2020. Sri Ajay Singh Bisht, learned Standing Counsel for the NIT, would submit that the NIT has no role to play in the identification of land, for location of the permanent campus of NIT, as it is a matter between the Central and the State Governments.

69. Sri Pradeep Joshi, learned Standing Counsel for the State Government, would submit that, with regards the permanent campus, the matter was re-examined by the State Government; the land at Sumari was found ideal for location of the permanent campus of the NIT, Uttarakhand; and as both the State and the Central Governments were fully satisfied with Sumari as the location for the permanent campus of the NIT, no interference is called for. Learned Standing Counsel would refer to the 2013 Report regarding location; to the counter-affidavit and supplementary counter-affidavit of the State Government; and to the letter of the Executive Engineer dated 28.03.2019 in this regard.

(i) **STAND OF THE CENTRAL GOVERNMENT ON THIS ISSUE:**

70. In his Additional Counter-Affidavit dated 15.03.2020, the Under Secretary, MHRD, Government of India states that the land at Sumari had earlier been finalized and handed-over by the State Government for setting up the permanent campus of NIT, Uttarakhand; the Site Selection Committee of the MHRD had, in the year 2013, recommended location of the permanent campus at Sumari; though the CPWD, in its earlier report dated 21.09.2017, had referred to the area as being prone to landslides by citing the recommendation of the Site Selection Committee dated 08.06.2013, the State Government had, by its letter dated 05.07.2018, requested the MHRD to reconsider the suitability of the land at Sumari for the permanent campus; based on the request, for reconsideration of the suitability of land, the CPWD had made a detailed geological and geo-technical assessment survey of the land through the Geological Survey of India, and had submitted a report (in June 2019) with certain recommendations; the Committee, comprising of senior Geologists, found that the area feasible for locating the NIT at Sumari complex; out of the entire area comprising of about 300 acres of land, various infrastructures (academic blocks / hostel / library / departments etc.) are proposed in approximately 100 acres of land only, which is recommended as most suitable for construction work as per the report submitted by the Geological Survey of India in the year 2019; the NIT, Uttarakhand had, accordingly, submitted the revised DPR to the Ministry after approval from their Board; the MHRD had examined the revised DPR and prepared revised Cost Estimates (RCE) of the Institute; they had, subsequently, taken up the RCE proposal with the Revised Cost Committee (RCC); the RCC had considered the proposal in its meetings held on 06.11.2019 and 20.11.2019; following their recommendations, a revised DPR, after including the recommendation of the RCC, had been submitted by the NIT, Uttarakhand on 05.02.2020; the MHRD, after incorporating the recommendations of the Review Cost Committee, had prepared the Expenditure Finance Committee (EFC) Memorandum, and had circulated the same for inter-ministerial consultation; and after receiving the recommendations from the stake-holders, the final

EFC memorandum will be placed before the competent authority for final approval of the project; and the Ministry of Human Resource Development, Government of India is committed to take all effective steps for establishing the NIT campus.

71. Before examining the validity of the decision making process, which resulted in the Central Government's nod in the choice of Sumari as the location of the permanent campus of NIT, Uttarakhand, it is necessary to take note of the law declared in **Nandlal Jaiswal**<sup>19</sup>, on which reliance is placed by Mr. V.K. Kaparwan, learned Standing Counsel for the Central Government. In **Nandlal Jaiswal**<sup>19</sup>, the Supreme Court held that there are two important factors which throw light in determining whether a policy decision is malafide or motivated by improper considerations; one relates to the manner and method of reaching the policy decision, and the other to the circumstances in which the policy decision is taken, and the considerations which have entered into the making of it; there was not an iota of evidence to establish, or even indicate that the State Government was actuated by any collateral purpose or was guilty of any 'sinister underhand dealing' or was prompted by any corrupt motive in reaching the policy decision; there was no attempt at any stage to suppress discussion and debate, or to avoid or side-track or push under the carpet any doubts or questions raised by any of the parties involved in the deliberations; the policy decision was not arrived at by a single individual in the secrecy of his chamber; the entire proceedings showed that there was complete openness of discussion and deliberation; there was no suddenness of decision, no impulsive caprice or arbitrariness in reaching the decision; the policy decision was plainly and avowedly an informed and institutionalised decision; and the manner in which it was reached clearly indicates that it was neither mala fide nor guided by any corrupt or collateral considerations.

72. The judgment of the Supreme Court, in **Nandlal Jaiswal**<sup>19</sup>, is inapplicable to the case on hand. It is not even contended before us that the Government of India was guilty of any 'sinister underhand dealing' or was prompted by any "corrupt motive", or that it had arrived at such a decision

in the secrecy of its chambers. What is contended before us is that the decision taken by the Central Government, to locate the permanent campus of NIT at Sumari only to “end the impasse”, suffers from irrationality and unreasonableness, and is therefore in violation of Article 14 of the Constitution of India. Reliance placed on **Nandlal Jaiswal**<sup>19</sup> is, therefore, misplaced.

**(ii) JUDICIAL REVIEW: ITS SCOPE:**

73. In considering the validity or otherwise of the decision of the Central Government in approving “Sumari” as the location of the permanent campus for NIT, Uttarakhand, it is useful to take note of the scope of judicial review by the High Court in such matters. Judicial review is a jurisdiction which has been developed and is still being developed by judges. It has many strands and more will be added, but they are and will always be closely interwoven. But however the cloth emerges from the loom, it must never be forgotten that it is a supervisory and not an appellate jurisdiction. (**REGINA v. SECRETARY OF STATE FOR THE HOME DEPARTMENT, Ex parte BRIND AND OTHERS**<sup>21</sup>). The discretionary power of the executive authorities is subject to judicial review, a remedy invented by judges to restrain excess or abuse of power. On an application for judicial review, the Courts must not substitute their own views for the informed views of the concerned authority, and a margin of appreciation must be afforded to him to decide whether, and in what terms, such discretion should be exercised. (**REGINA**<sup>21</sup>).

74. There are three grounds upon which administrative action is subject to control by judicial review. The first ground is “illegality,” the second “irrationality” and the third “procedural impropriety.” “Illegality”, as a ground for judicial review, means that the decision-maker must understand correctly the law that regulates his decision-making power, and must give effect to it. Whether he has or not is, par excellence, a justiciable question to be decided, in the event of a dispute, by the judges, by whom the judicial power of the state is exercisable. By “irrationality” is meant what can, succinctly be referred to as

“Wednesbury unreasonableness” (**Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation**<sup>22</sup>). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person, who had applied his mind to the question to be decided, could have arrived at it. “Irrationality” is as an accepted ground on which a decision may be attacked by judicial review. The third head, “procedural impropriety”, not only covers failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision, it also covers failure, by an administrative tribunal, to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. (**Council of Civil Service Unions & others vs. Minister for the Civil Service**<sup>23</sup>; **State of Andhra Pradesh and Ors. Vs. McDowell and Co. and Ors**<sup>24</sup>; **Tata Cellular v. Union of India**<sup>25</sup>).

75. On the question of legality, the concern of the Court should be (1) Whether a decision-making authority exceeded its powers?; (2) Whether it has committed an error of law; (3) Whether it has committed a breach of the rules of natural justice; (4) Whether it has reached a decision which no reasonable tribunal would have reached or; (5) Whether it has abused its powers. (**Tata Cellular**<sup>25</sup>). On the question of irrationality, the Court should, in conformity with Wednesbury principles, (**Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation**<sup>22</sup>), consider whether the concerned authority has taken into account all relevant matters, and has ignored irrelevant matters, and whether his decision is “irrational” or “perverse.” (**REGINA**<sup>21</sup>).

76. The scope and extent of the power of judicial review, under Article 226 of the Constitution of India, would vary from case to case, the nature of the order, the relevant statute, as also other relevant factors including the nature of power exercised by the public authorities. (**State of U.P & another vs. Johri Lal**<sup>26</sup>). Judicial review is a fundamental mechanism for keeping public authorities within due bounds, and for

upholding the rule of law. Instead of substituting its own decision for that of the other body, as happens when on appeal, the Court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not. If administrative action is in excess of power (*ultra vires*), the Court has only to quash it or declare it unlawful (these are in effect the same thing), and then no one need pay any attention to it. The authority has in law done nothing, and must make a fresh decision. (**Wade's Administrative Law, 8th edition at pages 33-35; Johri Lal<sup>26</sup>**). The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the Court. (**Chief Constable of the North Wales Police v. Evans<sup>27</sup>; Johri Lal<sup>26</sup>**).

77. The power of judicial review is neither unqualified nor unlimited. It has its limitations. (**Heinz India (P) Ltd. v. Union of India<sup>28</sup>; Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd<sup>29</sup>**). If the scope of review is too broad, agencies are turned into little more than a media for transmission of cases to Courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired, through continuous administration, in complicated fields. At the same time, Court should not rubber-stamp agencies, the scope of judicial enquiry must not be so restricted that it prevents full enquiry into the action of legality. If that question cannot be properly explored by the Judge, the right to review becomes meaningless. In the final analysis, the scope of review depends on the individual judge's estimate of the justice of the case. (**Prof. Bernard Schwartz (Administrative Law, III Edn); Johri Lal<sup>26</sup>**).

78. The remedy of judicial review is intended to protect the individual against the abuse of power by a wide range of authorities, including administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law, and to substitute the courts as bodies making the decisions. It is intended to see that the relevant authorities exercise their powers in a proper manner.

(**Chief Constable of the North Wales Police**<sup>27</sup>; **Tata Cellular**<sup>25</sup>). Judicial Review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power. (**Chief Constable of the North Wales Police**<sup>27</sup>; **Tata Cellular**<sup>25</sup>).

79. The High Court is empowered to exercise its powers of judicial review when it finds that the impugned decision is so arbitrary and capricious that no reasonable person would have ever arrived at. The test is not what the court considers reasonable or unreasonable, but that the Court thinks that no reasonable person could have taken. (**Municipal Council, Neemuch Vs. Mahadeo Real Estate and Ors**<sup>30</sup>). Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether the choice or decision is made "lawfully", and not to check whether the choice or decision is "sound". (**Jagdish Mandal v. State of Orissa**<sup>31</sup>; **The Bharat Coking Coal Ltd. and Ors. v. AMR Dev Prabha and Ors**<sup>32</sup>). Judicial review is made effective by the Court quashing an administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision, on merits, for that of the administrative officer. (**Tata Cellular**<sup>25</sup>).

80. The sweep of the power under Article 226 is wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a Writ Court. If the decision cannot rationally be supported by the material on record, the same would be regarded as perverse. (**West Bengal Central School Service Commission v. Abdul Halim**<sup>33</sup>; **Mahadeo Real Estate**<sup>30</sup>).

81. It is no doubt true that, however extensive the jurisdiction under Article 226 may be, it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the

correctness of the decision impugned, and decide what is the proper view to be taken or the order to be made. (**Veerappa Pillai**<sup>12</sup>; and **T.C. Basappa**<sup>13</sup>). While exercising the power of judicial review of administrative action, the Court is not an appellate authority, and the Constitution does not permit the Court to direct or advise the executive in matters of policy which, under the Constitution, lies within the sphere of the executive, provided these authorities do not transgress their constitutional limits or statutory power. (**State of Orissa and others vs. Gopinath Dash and others**<sup>34</sup>; **Ashif Hamid v. State of J&K**<sup>35</sup>; and **Shri Sitaram Sugar Co. v. Union of India**<sup>36</sup>).

82. The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provision or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere. (**Gopinath Dash**<sup>34</sup>). The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another, is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation. (**Gopinath Dash**<sup>34</sup>).

**(iii) POLICY DECISIONS: SCOPE OF INTERFERENCE UNDER ARTICLE 226:**

83. As the decision of the Central Government, in its choice of “Sumari” as a location for the permanent campus, is claimed to be a policy decision, let us now examine the scope of interference by the High Court, in the exercise of its powers of judicial review, with executive policy decisions. In a democracy, it is the prerogative of each elected Government to follow its own policy. Unless any illegality is committed in the execution of the policy, or the same is contrary to law or malafide, a decision bringing about change cannot, *per se*, be interfered with by the Court. (**BALCO Employees Union (Regd) vs. Union of India and others**<sup>37</sup>). Though the subject decision cannot be characterized as an “economic policy”, it is

necessary to bear in mind that the wisdom and advisability of economic policies are, ordinarily, not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider the relative merits of different economic policies, and consider whether a wiser or better one can be evolved. (**BALCO Employees Union (Regd)**<sup>37</sup>). The Court would not examine the relative merits of different economic policies to strike it down merely on ground that another policy would have been fairer and better. In matters relating to economic issues, the Government has, while taking a decision, the right to "trial and error" as long as both trial and error are bonafide and within the limits of authority. For testing the correctness of such a policy, the appropriate forum is Parliament and not the Court. (**Villianur Iyarkkai Padukappu Maiyam**<sup>20</sup>).

84. Policy decisions must be left to the Government as it alone can decide which policy should be adopted after considering all points from different angles. In matter of policy decisions or exercise of discretion by the Government, so long as infringement of fundamental rights is not shown, Courts will have no occasion to interfere. The Court will not, and should not, substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government, the Court cannot interfere even if a second view, different from that of the Government, is possible. (**Gopinath Dash**<sup>34</sup>). It is not for the court to determine whether a particular policy, or a particular decision taken in the fulfillment of that policy, is fair. It is only concerned with the manner in which those decisions have been taken. (**Tata Cellular**<sup>25</sup>).

85. However, if the policy decision is demonstrably capricious or arbitrary or it suffers from the vice of discrimination, the policy decision can be struck down. A public policy can be tested in the context of illegality and unconstitutionality. (**Krishnan Kakkanth v. Govt. of Kerala**<sup>38</sup>). If the policy of the Government fails to satisfy the test of reasonableness, it would be unconstitutional. What is imperative and implicit in terms of Article 14 is that a policy is made fairly, and not arbitrarily. The basic requirement of

Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review, to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. (**Union of India v. International Trading Co.**<sup>39</sup>). The exercise of discretion is impeachable on well accepted grounds such as 'ultra vires' or 'unreasonableness'. (**Shri Sitaram Sugar Co. Ltd.**<sup>36</sup>). The ultimate test is whether, on the touchstone of reasonableness, the policy decision comes out unscathed. (**Union of India v. International Trading Co.**<sup>39</sup>).

86. If the policy of the government fails to satisfy the test of "reasonableness", then such a decision would be unconstitutional. (**Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.**<sup>40</sup>). A policy, or a change in it, can only be justified on the Wednesbury test of reasonableness. (**R. v. Secy. of State for the Home Deptt., ex p Hargreaves**<sup>41</sup>; **Punjab Communications Ltd. v. Union of India**<sup>42</sup>; and **R. v. Secy. of State for Transport, ex p Richmond upon Thames London BC**<sup>43</sup>). The Wednesbury principle of reasonableness is that an administrative decision is unlawful if it is so outrageous in its defiance of logic or of accepted moral standards that no sensible person, who had applied his mind to the question to be decided, could have arrived at it'. (**R. v. Secy. of State for the Home Deptt., ex p Hargreaves**<sup>41</sup>; **Punjab Communications Ltd.**<sup>42</sup>).

**(iv) STATUTORY OBLIGATIONS UNDER THE 2007 ACT:**

87. Conscious as we are of the limitations of judicial review, and need not be reminded of the need for Courts to defer to the wisdom of executive policy, we must also bear in mind that a Constitutional Court cannot shut its eyes to the problems on hand, and permit the respondents to avoid discharging their statutory obligations claiming protection on grounds of public policy, as the power of the High Court, nay, its duty is to reach out where substantial injustice is caused because of the action or inaction of the Governments and its officers.

88. While Mr. Abhijay Negi, learned counsel for the petitioner, claims that insistence by the State Government, for the permanent campus of the NIT, Uttarakhand to be located at Sumari, is because the Minister of Education in the Government of Uttarakhand hails from the region, the intransigence of the State Government, (as is evident from the letter dated 19.01.2017 addressed by the Union Minister of Human Resources and Development to the Chief Minister of Uttarakhand), appears more because of the backlash they apprehend from the villagers at Sumari, who had parted with their land in the fond hope that an Institution of excellence would be established thereat.

89. The justification put forth by the learned Advocate General, who initially appeared for the State Government, for the permanent campus to be located at Sumari was that, if all Institutions of excellence are located in the plains, it would result in lopsided development of the State, with its hilly parts being neglected and deprived of all forms of economic growth. This submission, of the learned Advocate General, is not without merit, as only 02 of the 13 districts of the State of Uttarakhand are located entirely in the plains (Haridwar and Udham Singh Nagar), 02 others partly in the plains and partly in the hills (Dehradun and Nainital), and all the other 09 districts of the State are located entirely in the hills. We cannot also brush aside the submission of the learned Advocate General, that the entire State of Uttarakhand is earthquake prone as it is located almost entirely in a high seismic zone and, if Institutions are required to be located elsewhere on this score, then no Institution of repute can be established in the State at all. The proposed investment by the Government of India, for establishing the permanent campus at Sumari, is in excess of Rupees 1000 crores, and it may well rise further because of cost escalation. Such investment would, undoubtedly, give an impetus to economic growth, besides ensuring overall development of the area, and may well result in an improvement in the living standards of the villagers of Sumari. The question which necessitates examination, however, is whether the aforesaid factors are relevant or

extraneous in deciding on the location of the permanent campus of an education institution of higher learning, like the NIT.

90. The National Institutes of Technology Act, 2007 (for short the “2007 Act”) is an Act to declare certain institutions of technology to be Institutions of national importance and to provide for instructions and research in branches of engineering, technology, management, education, sciences and arts and for the advancement of learning and dissemination of knowledge in such branches and for certain other matters connected with such institutions. Section 2 of the 2007 Act records that, as the objects of the institutions mentioned in the Schedule (which includes the NIT, Uttarakhand) are such as to make them Institutions of national importance, it is declared that each such institute is an Institution of national importance. The Schedule to the 2007 Act contains the list of Central Institutions incorporated into the Act, and the National Institute of Technology, Uttarakhand is listed at Sl. No. 26 thereof. Establishing NITs, which are Institutions of excellence and of national importance, at a particular location is to ensure maintenance of high standards of education, and to provide a conducive and safe environment for those students who are imparted education thereat, and the faculty employed to impart them the required high standards of education, for it was acknowledged, when the bill preceding the 2007 Act was introduced in Parliament, that well qualified students, coming out from these Institutions, are the future of this country.

91. The advantages, of establishing an Institution of excellence like the NIT in a less prosperous State like Uttarakhand, is that 50% of its intake is available only to students from this State, and admission of students, from other parts of the country, is restricted to the remaining 50%. Consequently it is the students, from different parts of the State of Uttarakhand, who would immensely benefit from an Institution, such as the NIT, being located within the State. The object of establishing an Institution is not served merely by its location within the State, but on the required facilities, in terms of faculty and infrastructure, being provided to enable the bright young minds, who join the Institution, to be imparted

education and training of the high standards expected of these Institutions of excellence, so that they may, on passing out therefrom, compete with the best and the brightest from different parts of the country.

(v) **TECHNICAL AND OTHER REPORTS ON THE SUITABILITY OF SUMARI AS THE LOCATION: THEIR DETAILS:**

92. Mr. Abhijay Negi, learned counsel for the petitioner, has referred, extensively to the technical and other reports whereby the suitability of the land at Sumari was examined.

(a) **TECHNICAL REPORT OF IIT ROORKEE DATED 03.05.2012:**

93. The first such report is the Geo-technical Survey Report of IIT, Roorkee dated 03.05.2012 on the suitability of the proposed site, for construction of the permanent NIT, Uttarakhand Campus. After inspecting the land identified in Sumari, the IIT Committee Report records, under the head "Site Observation", that Segment-A was a steep slope of more than 50°, ranging up to 70° at places; thin debris was generally present on the slope with intermittent weathered rock exposures; because of the steep slope, the development of terraces, for construction of buildings, may pose major slope stability problems; in a portion of Segment-A, where the slope was very steep i.e. more than 45 degrees, no construction was possible; the elevation difference between the terraces, in the remaining part of Segment-A, worked out to be prohibitively large; and for an academic campus like the NIT, such high elevation was not desirable. In its concluding remarks, the I.I.T. Roorkee Committee opined that the area in Sumari Village, earmarked for the establishment and construction of the NIT, Uttarakhand permanent Campus, could be divided into three distinct segments-A, B and C; Segment-A had a very steep slope and was not suitable for construction purposes; a part of Segment-B appeared to be suitable for construction, but the quantum of suitable area, in the middle portion, could be assessed only after detailed geo-technical investigations; only a part of Segment-C, i.e. the South Easterly portion, which was approximately 30 percent of the total area, appeared to be suitable for construction; the land requirement, for construction purposes in the hilly terrace, was generally more as compared

to that of the plain area; a portion of the area (30 percent) appeared suitable for construction over the whole area proposed for construction; and even this could only be confirmed after detailed mapping and investigations.

94. With reference to the land requirement of the NIT, including various structures for establishment of departments, laboratories, workshops, administrative buildings, hostels and extra-curricular activities, the IIT, Roorkee report records that the available area was grossly inadequate; the proposed area fell in Seismic Zone-IV, and was close to important regional thrusts; as such the terrain was not suitable for construction of a multi-storeyed building also; as far as planning, design and construction of an academic campus like the NIT, Uttarakhand was concerned, where wide terraces were required from functional considerations with minimum elevation difference, it appeared, from the geo-technical stand point, that the site identified was not at all suitable for construction of the NIT Campus.

95. The IIT, Roorkee report dated 03.05.2012, after dividing the proposed site at Sumari village into three segments A, B and C, opines that Segment-A was not suitable for construction; a part of Segment-B appeared suitable for construction, but the quantum of suitable area in the middle portion could only be assessed after a detailed geo-technical investigation; only a part of Segment 'C' i.e. south-eastern portion (approximately 30% of the total area) appeared to be suitable for construction; and even this could be assessed only after detailed mapping and investigations. It concluded that, as per the geo-technical report, the location (of Sumari) was not suitable for construction of the NIT campus.

**(b) SITE SELECTION COMMITTEE REPORT OF 2013:**

96. Thereafter, the Minister of Human Resource Development, Government of India, by his letter dated 09.05.2013, constituted a Site Selection Committee for a joint inspection. The said Committee, in its report, under the head "Topology", opined that a major part of the site was on the slopes of a hillock; some part of the land included a valley on the northern side of the hillock, and the slopes of another hill beyond the valley;

the southern slopes of the hillock, and slopes beyond the valley on the northern side, were at 25<sup>0</sup>, where construction was feasible; the western and northern slopes of the hillock were very steep, and were not suitable for construction; the valley, on the northern side of a steep slope, lacked sunlight and ventilation and was, hence, not suitable for construction; around 50 hectares of land was suitable for construction, and the remaining could be utilized for plantation, rainwater harvesting and solar farm; water from the Alaknanda river was required to be pumped up to about 600 meters from Srinagar which was 15 Kms away; the road connection to Srinagar, via NH-58 and NH-119, suffered disturbance during rainy season; the roads, maintained by the Border Roads Organization, were operational at all times, except for a few hours during rainy season; the proposed site was an earthquake prone area in Zone V, and was susceptible to landslides; the soil strength of the proposed land was poor, and there was a restriction on construction height; hence vertical expansion of construction of the Institute was required to be taken care of during preparation of the Master Plan; the construction being done on slopes required extensive terracing, and construction of retaining walls; the altitude difference between the lower area of the campus, and the upper area of the campus, was large (more than 150 meter or equivalent to 50 stories of a building); and a mechanized vertical transport system, like inclined tram or mechanized elevators, was essential.

97. Despite recording several deficiencies, including that the area was in earthquake prone Seismic Zone V, and was susceptible to landslide, the Committee opined that the offered land was suitable. It recommended the location at Sumari for establishment of the permanent campus at the proposed site.

98. Pursuant thereto, the Ministry of Human Resource Development, Government of India, informed the Chief Secretary, Government of Uttarakhand, by letter dated 04.1.2013, that they had accepted the Committee's Report; and urgent steps should be taken to transfer the land measuring 125.576 Hectares (approx. 310 acres) in favour

of NIT, Uttarakhand; and, among others, the proposed piece of land should be in one single chunk and not fragmented. The State Government was requested to initiate the process of physical transfer of the said land immediately, so that the land could be placed at the disposal of NIT, Uttarakhand.

99. In his letter dated 04.10.2013, the Secretary, MHRD, Government of India informed the Chief Secretary, Government of Uttarakhand, that the Ministry had accepted the report of the Site Selection Committee (SSC), constituted by the MHRD for setting up the permanent campus of NIT, Uttarakhand, which had recommended that the permanent site be located at Sumari, Srinagar, Pauri district. The Chief Secretary was requested to take urgent steps to transfer the land admeasuring 125.5676 hectares (approximately 310 acres) in favour of NIT, Uttarakhand; and, while doing so, ensure, among others, that the proposed piece of land should be in one single chunk, and not be fragmented. The State Government was requested to initiate the process of physical transfer of the said land immediately so that the land could be placed at the disposal of NIT, Uttarakhand.

**(c) COLLAPSE OF THE BOUNDARY WALL, CONSTRUCTED FOR THE PERMANENT CAMPUS OF NIT AT SUMARI, BECAUSE OF LANDSLIDES:**

100. Pursuant to the decision taken by the Government of India, in its letter dated 04.10.2013, the construction work of the compound wall, for the permanent campus at Sumari, commenced. In his letter dated 04.03.2014, the then Director, NIT, Uttarakhand informed the General Manager, NBCC Ltd., Roorkee that a work order had been issued for construction of the compound wall of the permanent campus of NIT Uttarakhand at Village Sumari; the NIT, Uttarakhand had approved a sum of Rs. 1,327.48 lacs (ie Rs.13.27 crores) for construction of the compound-wall of the permanent campus on condition that NBCC would complete the construction of the compound-wall, at the approved cost of Rs. 1,327.48 lacs, within six months i.e. by 05.09.2014. The first installment of Rs. 400 lacs (Rs.4.00 crores) was enclosed by way of a cheque; and the balance

amount was to be released in installments only after completion of the works.

101. By his letter dated 28.10.2014, the General Manager, NBCC Ltd., informed the Director, NIT that construction work of the boundary wall, of the permanent campus, was near completion on Stretch 'A' and 'B'; it was difficult to go for RCC fencing work in 'C' stretch as it was inaccessible due to thick forest, steep terrain and for want of approach road; and the work was therefore delayed on this stretch. This was reiterated in the letter dated 03.02.2015 and, while informing the Director, NIT, Uttarakhand that the boundary-wall work in stretches 'A' and 'B' had been completed, it was stated that, in stretch 'C', the sample of the boundary-wall had not been prepared to enable them to proceed with the work. The Chief General Manager, NBCC, in his letter addressed to the Director, NIT, Srinagar on 03.05.2015, informed that a preliminary cost estimate was prepared for the works related to the site development along with the terracing and RCC retaining wall of 12 meters to 18 meters high; and in the meeting held on 24.04.2015, the Associate Consultant had suggested two options for terracing of the site.

102. It does appear that, during the course of construction of the compound wall, a twenty meter portion thereof collapsed because of landslides and rains. The minutes of the 8<sup>th</sup> meeting of the Board of Governors of NIT, held on 14<sup>th</sup> July, 2015, records the Director, NIT having informed the Board of Governors that the mountainous terrain allotted for the campus posed serious hurdles to construction; a 20 meter portion of the boundary fencing had collapsed in the recent landslide following rains; it was in a steep slope of the land, and in a fragile terrain; and the present estimate of the completed campus would cost Rs. 1415 crores including land levelling and soil stabilization as against the present cost of Rs. 925 crores.

**(d) BOARD OF GOVERNORS OF NIT, UTTARAKHAND WANTED AN ALTERNATIVE SITE TO LOCATE THE PERMANENT CAMPUS:**

103. In its meeting held on 14.07.2015, the BOG decided that the Ministry of Human Resource Development should be apprised of the

situation, and requested for allotment of the requisite funds; given the high cost of the project, the Ministry should also be approached for allotting a fresh parcel of land that was more suited for the campus at an alternative site; and all the construction activities, including the compound wall, should be suspended till clearance was received from the MHRD.

104. The 9<sup>th</sup> meeting of the Board of Governors of NIT, Uttarakhand, held on 06.01.2016, records that the Government of India had conducted a review committee meeting for construction activities, in which NBCC, EdCIL, IIT Roorkee had participated; vide Office Memorandum dated 18.09.2015 certain norms were stipulated for construction of buildings at the permanent campus; one of the stipulations stated that “the master plan and design should be made without cutting the Himalayas”; the site survey report indicated the presence of natural debris on the permanent site upto a depth beyond 4 meters; experts from IIT Roorkee had opined that a footing, on the natural debris, was likely to be unsafe due to the possibility of land sliding; they had recommended that footings be built on proper ground which could be exposed only after removing the natural debris; and it was proposed, among others, to seek expert opinion from IIT Delhi, IIT Madras, IIT Roorkee and IIT Hyderabad on the feasibility of construction without removing the soil in the site.

105. The Board of Governors rejected the said proposal of the review committee, considering the expert opinion on the suitability of the allotted site, in view of the terrain of land. The Board observed that, in the present location, safety of the lives and property could be compromised considering the fact that the area was prone to landslides, earthquake and cloudbursts. The Board decided that, in order to provide better and safer facilities to students and faculty for at least three years, the Institute develops a plan of investment in the infrastructure at the temporary campus; and the Chairman with a few members of BoG should meet senior bureaucrats in the HRD Ministry to seek assistance for allotment of new land.

(e) **CORRESPONDENCE BETWEEN THE CENTRE AND THE STATE ON ALTERNATIVE LAND FOR PERMANENT CAMPUS:**

106. In the letter addressed by her to the then Chief Minister of Uttarakhand on 28.06.2016, the then Minister for Human Resource Development, Government of India, stated that she had been informed that a portion of the fencing at the boundary of the campus had collapsed due to landslide; in the wake of the above, the Board of Governors of NIT, Uttarakhand had, in its meeting, consulted experts and had reviewed the situation; it had been informed to the Ministry (MHRD) that the above site was prone to landslides/ earthquakes and cloudbursts; therefore, the safety of the campus would be a major concern, if a permanent campus is built on the said site; NIT, Uttarakhand had been functioning from its temporary campus; therefore, constraint of space limited expansion of the capacity, and also prohibited full potential of institutions like NIT; the State of Uttarakhand is the major beneficiary of NIT, Uttarakhand as 50% of the students of NIT belonged to Uttarakhand; and the Chief Minister should look into the matter, and provide an alternate suitable piece of land at a place having good civic infrastructure for the permanent campus of NIT, Uttarakhand so that much awaited construction activities can be initiated.

107. After a change in the office, the subsequent Minister of Human Resource Development, Government of India informed the then Chief Minister of Uttarakhand on 19.01.2017, drawing his attention to the earlier letters dated 28.06.2016 and 26.10.2016, that, as an alternate site had not been offered, the work of the permanent campus of the Institute had still not been started. The Chief Minister was again requested to look into the matter, provide an alternate piece of land at a place having good civic infrastructure for the permanent campus of NIT, and ensure that no untoward incident takes place at Sumari, Srinagar (Garhwal) while allotting alternate land for the permanent campus, since it was learnt that the villagers of Sumari, Garhwal were disappointed because of non-initiation of construction work at Sumari i.e. at the land which was finalized earlier.

108. The Secretary, MHRD, by his letter dated 12.07.2017, informed the Chief Secretary, Government of Uttarakhand that the land allotted at Sumari, Garhwal had been found unsuitable as it was prone to landslides; the safety of students and staff would thus be a constraint concern; NIT, Uttarakhand, had not been able to expand its capacity due to non-availability of land; lack of desired infrastructure had been the major cause for inadequate facilities, and support to the students and faculty, leading to poor quality of education and dissatisfied students and faculty; and 200-300 acres of an alternate suitable piece of land be provided at a place having good civic infrastructure for the permanent campus of NIT, Uttarakhand in Dehradun.

**(f) CPWD TECHNICAL REPORT DATED 21.09.2017:**

109. Despite the Government of India expressing its reservations on Sumari as the location for the permanent campus of NIT, a two-member team of the Central Public Works Department, along with the Registrar, NIT, Uttarakhand, the Director of the Ministry of Human Resource Development and others, were deputed again to inspect the proposed site at Sumari Village, on 15.09.2017, for construction of the permanent campus of the NIT. The said committee, in its report dated 21.09.2017, opined that the land, identified for establishment of a permanent campus of the NIT, was basically a hillock/mound of silty gravel and divided, at most of the places, into two parts by a deep valley; it had no flat area; some part of the land, on the southern side of the hillock, had a slope of around 25 degrees or less; construction on this part of the land could be planned, but with high retaining walls of a height of more than 12 metres and 18 metres; a number of retaining walls, for making terraces for the buildings and roads, had been proposed; a proper gradient for the roads was also not feasible; the area fell under Seismic Zone V which was most vulnerable to earthquakes; it was not advisable to construct so many retaining walls one after another to get a horizontal/terrace land for construction of buildings and roads; cutting of hillocks, and making a foundation for the retaining walls and buildings, would further weaken its stability on the ground; surface protection and drainage was necessary to protect the ground, and would require a huge

amount to be spent; the area was also vulnerable to landslides; and some stretches of landslides were also seen during the site visit.

110. The CPWD Committee further opined that IIT, Roorkee had reported that natural debris was present on the ground upto 4 meters in depth and beyond; they had recommended that the building footing should rest on proper ground, which could be executed only after removing the natural debris; for construction of the NIT campus, many buildings, with large areas, were required to be constructed; to accommodate a bigger size building, terrace sizes were required to be large, resulting in more cutting of the slope and constructing high retaining walls; overall only about 25-30 percent of the land was usable, that too on construction of a large number of retaining walls for making terraces; construction of the retaining walls and terraces would take a long time, and there is every likelihood of time and cost over-runs due to site constraints; and massive construction of the NIT campus, including buildings and roads on steepy hilly slopes, may further destabilize the natural soil, and may lead to incidents of landslides during or after construction, thus endangering the life of persons and the safety of buildings.

111. The Committee concluded that the site was on the slope of hillocks; it fell under Seismic Zone-V, and was prone to earthquakes and landslides; the slopes were very steep (more than 25 degrees and upto 65 degrees), and only a portion of the site (about 25% to 30%) was suitable for construction, where the slopes were gentler (upto 25 degrees); from the geo-technical point of view, construction of the NIT Campus at this site was not recommended on account of safety concerns (landslides, earthquakes, cloudbursts etc.), besides very high cost of construction, with possibility of time and cost over-runs; and, in view thereof, the proposed site at Village Sumari, Srinagar (Garhwal) was not recommended for construction of the permanent campus of the NIT, Uttarakhand.

112. Despite the adverse report of the CPWD, the State Government was intransigent in its stand that the permanent campus of the NIT should

be located at Sumari, and the Chief Minister of Uttarakhand informed the Minister of Human Resource Development, by his letter dated 27.10.2017, that Uttarakhand, being a hill State, was prone to earthquake, landslides and cloudbursts, which is a permanent feature; construction activities are taking place in the hill regions of the State; construction agencies keep the above factors in mind while designing the projects, and preparing the cost estimates; and it would be prudent that a meeting between the State and MHRD may be held at the earliest to resolve the issue.

**(g) TRAGIC INCIDENT OF 03.10.2018 AND ITS REPURCUSSIONS:**

113. After the tragic incident of 3<sup>rd</sup> October, 2018 when a young girl suffered grievous injuries on being hit by a speeding car on a National Highway, and the consequent furore regarding the ill-advised location of the temporary campus of NIT at Srinagar, the Minister, Human Resource Development informed the Chief Minister of Uttarakhand, some time in the last quarter of 2018, that, in the meeting held between them on 17.01.2018, the latter had suggested that the land offered at Sumari may be used for constructing a part of the campus of NIT; another land measuring about 135 acres near this land was also offered for the construction of the permanent campus; the Ministry was yet to receive a formal communication about the land; two girl-students, of the under graduate course at NIT, Uttarakhand, were run-over by a speeding car on 03.10.2018, while they were walking from the Polytechnic campus to the ITI campus for their daily laboratory classes; as a result, one of the girls had received serious multiple injuries (broken spine and paralyzed); she was admitted to AIIMS Rishikesh where her condition was still not out of danger; consequent to this tragic accident, the students of the NIT Uttarakhand had called for an indefinite strike from 04.10.2018 demanding shifting of the temporary campus to the plains or the pooling of the campus with renowned Institutes near major cities like Haridwar, Dehradun and Rishikesh; and for allotment of suitable land for establishment of a permanent campus of the Institute. The Chief Minister was requested to look into the issue and arrange to provide a suitable piece of land for establishment of a permanent campus of NIT, Uttarakhand.

**(h) EVENTS SUBSEQUENT TO THE INSTITUTION OF THE PRESENT WRIT PETITION, AND THE REPORT OF THE COMMITTEE CONSTITUTED BY THE STATE GOVERNMENT:**

114. The petitioner, an alumni of NIT, Uttarakhand, filed the present writ petition on 15.11.2018 seeking, amongst others, a writ of mandamus directing the respondents to finalize an appropriate location for the NIT, Uttarakhand permanent campus, and to construct the campus in a time-bound manner. This, possibly, spurred the State Government into action and, by letter dated 14.12.2018, a Committee chaired by the Additional Chief Secretary, Technical Education was constituted to review the site proposals for the permanent campus of the NIT, Uttarakhand at Sumari, Srinagar.

115. The Eleven-Member Committee visited the site and opined that it was informed by the local administration that there is a willingness on the part of local villagers to allow further use of their private landholdings over and above the land already transferred, provided that actual work commences; there was a reasonable apprehension on the part of the villagers regarding construction as they believed that the project had been unduly delayed without justifiable cause; on visual inspection, it was concluded that the area was free from any signature of landslides/ground deformations and, *prima facie*, seemed suitable for construction of the permanent campus; no evidence of cloudbursts or similar occurrence were found in and around the proposed site; the past records, as submitted by the District Administration, suggested no evidence of cloudbursts in the recorded history; visual inspection of the broken and missing portions of the fence suggested that there was inadequate embedment and improper compaction while erecting and installing the fence, thus causing portions of them to get up-rooted; and that there were no evidence to suggest that fences were broken by heavy rainfall or landslide. On perusal of the contour maps, the master-plan and the initial Detailed Project Report of the NBCC, the Committee observed that the contour scale was of 1:2000 and in 2 meter intervals; for better understanding of the ground, and for appropriate

planning purposes, a topographical survey at 1:1000 scale with 1 metre contour interval should be conducted; a residential block had been proposed at the top portion of the slope, the academic portion and the hostels in the middle and the administrative portion on the lower portion of the south-facing slope; the academic and the hostel blocks could be proposed on the middle portion, though it had not been included in the master plan; and the administrative block was proposed adjacent to the road on the lower portion, and the residential and staff blocks on the upper portion. The Committee raised concerns as to the fidelity of the soil testing reports on the basis of which NBCC had revised its estimates because (1) these tests were conducted without any knowledge of NIT administration; (2) there was no map markings /site drawings to corroborate the site samples; (3) there was no physical markings on the actual site / ground; (4) rock testing was not conducted; and (5) plate size used, as recorded, was too small (300 mm X300 mm). This Committee recommended that the pre-feasibility reports need to be re-conducted with clearly defined parameters; master plan for the permanent campus should be re-worked with Phase-I design to accommodate a maximum of 1500 students capacity; other newly built or under-construction campuses in Uttarakhand, (for example Garhwal University at Srinagar, LBSNAA at Mussoorie), may be considered for understanding hill-based construction; and the expertise of agencies/CPWD, which were executing such projects, should be sought for practical engineering solutions.

116. The eleven-member Committee, constituted by the State Government, arrived at its conclusion, regarding suitability of the location at Sumari, on mere visual inspection. Curiously, the Committee records that the area was free from any signature of landslide and shifts the blame, for collapse of the compound wall, to poor construction by NBCC, and that it was not on account of landslides, though, when a compound-wall for the permanent campus was hitherto constructed at Sumari by the NBCC at the behest of the NIT, Uttarakhand, and on funds being made available by the Central Government, both NIT and NBCC had opined that a portion of the

compound-wall had collapsed because of land slides. It was pursuant thereto, that the NIT had informed MHRD, Government of India that the said land was not suitable for location of the permanent campus of NIT, Uttarakhand. It is indeed disconcerting that the eleven member committee should have arrived at such far-reaching conclusions, regarding absence of landslides, on mere visual inspection.

117. In any event, this eleven member Committee had merely opined that pre-feasibility reports (possibly study) needed to be conducted with clearly defined parameters; the master plan should be restructured with a design to accommodate a maximum of 1500 students; expert assistance of the Central Soil and Water Conservation Training Research Institute, Kaulagarh Dehradun, and other institutions, should be sought; soil testing and rock testing should be undertaken; and other newly built or under-construction campuses in Uttarakhand should be looked at to understand hill-based construction and expertise of these changes should be sought to arrive at practical engineering solutions.

118. Even without undertaking the pre-feasibility exercise, as suggested by the eleven-member Committee constituted by the State Government and, though the earlier CPWD report, which caused an inspection of the site on 15.09.2017, had opined that the said site was not suitable for a permanent campus, the Government of India gave its consent for the permanent campus of NIT to be located at Sumari.

(i) **IS THE DECISION OF THE CENTRAL GOVERNMENT, TO LOCATE THE NIT PERMANENT CAMPUS AT SUMARI “ONLY TO END THE IMPASSE”, LEGAL?**

119. In its order in Writ Petition (PIL) No. 217 of 2018 dated 27.03.2019, this Court, after noting the contents of the earlier counter-affidavits filed by the Union of India, had observed that the said counter affidavits reflected the reservations of the Union of India on “Sumari” as the location for establishing an NIT; the stand of the State Government, however, was that locating all institutions of excellence in the plains would result in lopsided development of the State, and hilly areas of the State

being deprived of such institutions of higher learning; what appears to have been lost sight of, in the process, was that the State of Uttarakhand was possibly facing a situation where it may lose out completely on an NIT continuing to function within the State; except for the final year students of NIT, who were still continuing their studies at Srinagar (the temporary campus), all the other students of years 1, 2 & 3 had been shifted to a satellite temporary campus at Jaipur in Rajasthan; the fate of the institute was uncertain; it was not clear whether students would be inducted in the first year engineering course in NIT, even at the satellite campus at Jaipur for the ensuing academic year 2019-2020, or whether the Government of India intended to slowly phase out the institute itself; the only possible solution to this vexed problem, which had dogged establishment of the NIT in Uttarakhand for the past decade (ever since 2009), was if the State Government was directed to identify four locations in different parts of the State (both in the plain areas and in the hills); and the Union of India is then requested to identify the most suitable among these locations for establishing the permanent campus of the NIT. The Chief Secretary, Government of Uttarakhand, was requested to submit a report regarding the efforts made by the State Government to identify four locations, of the required extent of land, in different parts of the State of Uttarakhand, in one of which the permanent campus of the NIT could be established, and the matter was directed to be listed on 24.04.2019.

120. In its order dated 24.05.2019, this Court noted the submission urged on behalf of the petitioner that, since the Minister of Education, Government of Uttarakhand is from Srinagar, and it is only because of his insistence that the institution be established there, that no other location is being identified; and this insistence on the NIT being located at Srinagar was despite a report by an expert committee of the IIT, Roorkee that the land identified in Sumari is wholly unsuitable for establishing a permanent NIT campus.

121. In its order in Writ Petition (PIL) No. 217 of 2018 dated 07.05.2019, this Court noted the contents of the affidavit, of the Under

Secretary, MHRD, Government of India, dated 03.05.2019, that the State Government had submitted the site survey report, Topo sheet, and a copy of the report of soil investigation, for the proposed site of N.I.T; the Topo report, giving the contours of the land proposed in Sumari Village, was received by the Government of India on 29.04.2019; however no D.P.R. had been received; the Topo report revealed that more than half the area was unusable due to high gradient, but construction appeared to be possible in three clusters separated by hills; the MHRD, Government of India had accepted the land, offered by the State Government, only to **end this impasse**; they would depute the Site Selection Committee to perambulate the area, and get the Detailed Project Report within the next three months; and the DPR so prepared, would be considered for sanction in consultation with the Ministry of Finance.

122. That the decision of the Government of India, to accept the land at Sumari handed-over to it by the State Government, was only to “**end the impasse**” is specifically asserted in the counter-affidavit filed on behalf of the Government of India dated 03.05.2019, the contents of which were noted by this Court in its order dated 07.05.2019. It is also evident, from the said counter-affidavit, that the decision to locate the permanent campus at Sumari had been taken by the Government of India before 03.05.2019. The justification based on the subsequent technical report of the Geological Survey of India, which caused an inspection in June, 2019, is a post-decisional event i.e. the decision to locate the permanent campus at Sumari had already been taken even without causing any technical survey afresh for, till then, the earlier reports of the IIT, Roorkee and the CPWD had opined that the land at Sumari was not suitable for location of the permanent campus.

(j) **REPORT OF THE GEOLOGICAL SURVEY OF INDIA IN JUNE, 2019:**

123. Reliance is heavily placed on the report submitted by the Geological Survey of India pursuant to the geo-technical assessment conducted by it between 13<sup>th</sup> and 22<sup>nd</sup> June, 2019. It is useful, therefore, to

note its contents. The Chief Engineer, CPWD, Dehradun requested the Geological Survey of India to make a geological and geo-technical assessment, of the proposed site, for establishment of the NIT campus at Sumari Village, Srinagar. After initial survey was carried out on the 05<sup>th</sup> and 06<sup>th</sup> June, 2019 followed by a geo-technical assessment survey between 13<sup>th</sup> June, 2019 and 22<sup>nd</sup> June, 2019, the Geological Survey of India submitted its report.

124. The GSI report records that the area at Sumari falls under low, moderate and high susceptible zones as per the landslide susceptibility map of the Geological Survey of India (2019); most of the area falls under moderate susceptible zone with patches of low and high landslide susceptible zones; the area also fell in the high seismic zone (Zone-IV); the entire area comprises of 300 acres of land wherein various facilities were proposed in approximately 100 acres of land; the axial trace of the synform passes through the nala located in the south of the study area; the rock showed moderate to steep ( $30^{\circ}$ - $60^{\circ}$ ) foliation that strike NW-SE ( $310$ - $330$ ); the area comprised of highly deformed and soft rock phyllites, and at places phyllites interbedded with hard quartzite; the general trend of the rock was  $40^{\circ}$ - $60^{\circ}$  to  $50^{\circ}$ - $70^{\circ}$  dipping into the hill; the steep slopes in the southern part may be due to palaeoslide and active slide scars (which, according to the learned counsel for the petitioner, indicates that landslides may occur again); the area was dissected by many 1<sup>st</sup> order drains/nalas which were mostly seasonal and originate from the slopes; there were numerous 1<sup>st</sup> order streams finally originating from the southern slopes that flow all along the slope length, and finally meets the main (E-W) trending stream further downslope beyond the study area; a slide scar is located at EI±1002 meters just above the road and below the area where residential quarters are planned to be located (it is contended, on behalf of the petitioner, that a slide scar is evidence of landslide); two nalas are located at EI±1022 meters (nala originates at EI±1162 meters and flows along the slope to road level); along the southern slope (N195) planar failure is expected by joint J3, whenever the slope angle increases to more than  $30^{\circ}$  (learned counsel for

the petitioner submits that a planar failure is when a huge rock slides down); along the slope towards N15, wedge failure by intersection of joints J2 and J4 is expected in slope more than  $40^{\circ}$  (it is contended on behalf of the petitioner that a wedge failure is when there is a landslide because of discontinuities i.e. the land itself is unstable).

125. The GSI report then records that the slope in the south of the playground increases to  $66^{\circ}$ , and extends upto the road level; this was a steep slope and would make the upslope area vulnerable to failure, and therefore needs to be treated properly before construction; the joint disposition showed that there was a chance of planar failure by joint J3 if the slope is cut at a higher angle (more than  $30^{\circ}$ ); near the road, intersection of joints J1 and J2 exhibits wedge failure, and planar failure was also expected by joint J3; the hostel area was located in the gentle slope; and an old slide scar is located at EI±1109 meter (south of the hostel block) which was a threat to the hostel blocks.

126. The GSI Report, thereafter, details its assessment of the construction layout, and records that the area of the academic block is traversed by several seasonal streams (nalas); in the northern slope, three nalas originating at EI±1198m, EI±1208m and EI±1176m with high gradient of  $30-45^{\circ}$  may create intense gully erosion, and in turn might cause slope instability in the area; and two seasonal nalas, originating from EI±1190m and EI±1174m, located at the eastern slope flow all through the slope length.

127. With regards student amenities/hostel block, the GSI report records that some evidence of ground subsidence, due to erosional activities of seasonal nalas, had been observed; and one old landslide scar had been observed in the south-eastern part where two hostel buildings and one mess are proposed to be constructed. The GSI report, thereafter, recommends that the entire hostel related amenities need to be founded on a rock mass comprising phyllites of moderate bearing capacity; the nalas in the area seem to have high erosive nature due to high gradient leading to scouring

and subsidence, particularly in the south-western part of the area, and therefore necessary remedial measures should be adopted in the design in order to safeguard ground subsidence; as regards the old landslide, necessary precautions/remedial measures may be adopted in order to impart stability to the hostel building and one mess which is proposed to be located in the southern part of the area; and the nala, which originates from EI±1106 meters and flows upto the road level, needs to be treated/diverted in order to avoid any problem of slope instability and risk to the proposed structures.

128. With regards residential quarters, the GSI report records that the area is dissected by three nalas, with erosive nature, causing ground subsidence at places; three buildings were proposed to be located just above the crown of a slide; the quarters, which were proposed to be located above/near the crown of the landslide, needs to be shifted to alternative locations; the administrative/convention block appeared, in general, to be stable, except for the two nalas which pass through the proposed administrative building; and due care should be taken while designing the foundation of the administrative block, as two nalas drain into the proposed area; and suitable stability measures should be adopted in order to protect the downslope of the library area.

129. The GSI report concludes with its opinion that the area appeared to be feasible for locating the NIT, Sumari complex; since all the buildings would be founded on hilly terrains (sloping ground), the disposition of discontinuities (particularly the joint sets) must be assessed in terms of their vulnerability for sliding at the time of foundation of geological mapping of each building, and road cutting for internal communication; most of the structures should, preferably, be founded on rock mass (phyllites) of moderate bearing capacity; since the area is characterized by several regional tectonic structures, the signatures of these tectonically weak zones were likely to be present in the rock mass in the form of shears, fractures and local faults, which may adversely affect the quality of the rock mass; these features may not be seen on the surface, but

may be day-lighted at the time of excavation of the foundation grade; foundation of all the structures should be evaluated/assessed by geotechnical personnel for deciphering/delineating such adverse features in the foundation; regionally, the area fell in the Seismic Zone IV, and a suitable design may be adopted in order to overcome any seismic risk; and all suitable and adequate slope stability measures should be kept in the design before working out the excavation plan in the area for overburden and rock covered slopes.

130. The GSI report, while guardedly expressing its opinion regarding suitability of Sumari as a location, has also opined that, as the area was characterized by several regional tectonic structures, the signatures of these tectonically weak zones were likely to be present in the rock mass in the form of shears, fractures and local faults which may adversely affect the quality of the rock mass; these feather may not be seen on the surface but may come to light at the time of excavation of the foundation grade; and the foundation of all the structures should be evaluated / assessed by geotechnical personnel for deciphering / delineating such features in the foundation.

131. While stating that the area falls in Seismic Zone-V, the GSI report suggests a suitable design to overcome seismic risk, and that the disposition of its discontinuities should be assessed in terms of their vulnerability for sliding at the time of foundation of geological mapping of each building. What the said report suggests is for a further assessment to be made to ensure the safety of the buildings proposed to be constructed in an area which fell in Seismic Zone-4 and was covered with overburden material i.e. material which have gathered in the area as a result of landslides.

132. We have not doubted the correctness of the findings recorded in any of these technical reports (apart from the report submitted by the eleven-member Committee constituted by the State Government, which had recorded its findings based on a mere visual inspection that the area was

free from any signature of landslides, though both the NIT and NBCC (a Government of India construction company) had blamed the earlier collapse, of a part of the compound wall, to landslides in the area.

**(k) FAILURE TO SATISFY THE TESTS OF RATIONALITY AND REASONABLENESS WOULD RENDER THE DECISION VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION:**

133. The question which necessitates examination is whether, on the basis of any of these technical reports, a reasonable person could have been reasonably satisfied that the permanent campus of NIT, Uttarakhand should be located at Sumari.

134. Arbitrariness, in administrative action or in policy decision making, would violate Article 14 of the Constitution, requiring the Court to interfere. If the administrative action is 'arbitrary', it can be struck down under Article 14. Arbitrary action, by the administrator, is described as one that is irrational, and not based on sound reason. It is also described as one that is unreasonable. (**E.P. Royappa v. State of Tamil Nadu**<sup>44</sup>; **Om Kumar and others vs. Union of India**<sup>45</sup>). Irrationality is a facet of arbitrariness and if the decision, taken to locate the permanent campus at Sumari, is held to suffer from irrationality, interfere we must, notwithstanding the admonition of the need to observe judicial restraint in policy matters falling within the executive realm.

135. "Irrationality" is said to be a synonym for Wednesbury unreasonableness, and "it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it," (**REGINA**<sup>21</sup>; **Secretary of State for Education and Science v. Tameside Metropolitan Borough Council**<sup>46</sup>; **Associated Provincial Picture Houses**<sup>22</sup>; **Tata Cellular**<sup>25</sup>; **Minister for the Civil Service**<sup>23</sup>). To characterise a decision of the administrator as 'irrational' the Court has to hold, on material, that it is a decision 'so outrageous' as to be in total defiance of logic or moral standards. (**Union of India & another vs. G. Ganayutham**<sup>47</sup>).

136. Where administrative action is questioned as 'arbitrary' under Article 14, the principle of secondary review, based on Wednesbury principles, applies. (**Om Kumar**<sup>45</sup>). Where an administrative action is challenged as 'arbitrary' under Article 14, the question is whether the administrative order is 'rational' or 'reasonable', and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. (**Om Kumar**<sup>45</sup>). A decision of a Public authority is liable to be quashed, or otherwise dealt with by an appropriate order, in judicial review proceedings where the Court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it (**Associated Provincial Picture Houses Limited**<sup>22</sup>; **The Supreme Court Practice 1993 Volume 1 Pages 849-850**; **Tata Cellular**<sup>25</sup>).

137. The word “unreasonably” means not “mistakenly” nor even “wrongly” but refers only to a situation in which the authority is acting or proposing to act in a way in which, in the circumstances prevailing and on the expert advice available, no reasonable authority could have acted. (**Tameside Metropolitan Borough**<sup>46</sup>). No one can properly be labelled as being unreasonable unless he is not only wrong but unreasonably wrong, so wrong that no reasonable person could sensibly take that view. All the more so when a judge is entrusted by law with the task of deciding whether another person has acted, is acting or is proposing to act, unreasonably. (**Tameside Metropolitan Borough**<sup>46</sup>).

138. The test of reasonableness does not entitle the Court to substitute its own view for that of the competent authority. Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. Not

every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable. There are a band of decisions within which no court should seek to replace the individual's judgment with his own. (**Lord Hailsham of St. Marylebone L.C. in *In re W. (An Infant)***<sup>48</sup>). Courts cannot escape from asking themselves whether a reasonable officer, on the material before him, could reasonably arrive at the conclusion which he has arrived at. (**REGINA**<sup>21</sup>).

139. The kind of unreasonableness for which a court can set aside an administrative act or decision is popularly called “**Wednesbury unreasonableness**”. The decision should be “so absurd that no sensible person could ever dream that it lay within the powers of the authority.” Decisions “so wrong that no reasonable person could sensibly take that view.” Wednesbury unreasonableness is a branch of the abuse or misuse of power. The Court's duty is not to interfere with a discretion which has been entrusted to a statutory body or an individual, but to maintain a check on excesses in the exercise of discretion. The act should be so unreasonable that no reasonable person would have done it. The supervising court must bear in mind that it is not sitting in appeal, but is satisfying itself as to whether the decision-maker has acted within the bounds of his discretion. (**Administrative Law , 6th ed. (1988), pp. 388–462; REGINA**<sup>21</sup>).

140. To arrive at a decision on 'reasonableness', the Court should ascertain whether the administrator has left out relevant factors, or has taken into account irrelevant factors. The decision of the administrator must fall within the four corners of the law, and should not be one which no sensible person could have reasonably arrived at having regard to the above principles, and must have been taken bonafide. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view. (**G. Ganayutham**<sup>47</sup>). The constitutional requirement, for judging the question of reasonableness and fairness on the part of the statutory authority, must be considered having regard to the factual matrix obtaining in each case. It

cannot be put in a straight-jacket formula. (**M.P. Gangadharan & another vs. State of Kerala & others**<sup>49</sup>).

141. The word 'unreasonable' has often been used in a sense which comprehends different grounds of review. The Court is entitled to investigate the action of the authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the authority, it may still be possible to say that, although the authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, the Court can interfere. The power of the Court to interfere in each case is not as an appellate authority to override a decision of the authority, but as a judicial authority which is concerned, as concerned only, to see whether the authority has contravened the law by acting in excess of its powers. (**Associated Provincial Picture Houses Ltd.**<sup>22</sup>; **Tata Cellular**<sup>25</sup>; **Johri Lal**<sup>26</sup>).

142. In exercising these powers, the courts will take into account any reason which the body may give for its decisions. If it gives no reasons - in a case when it may reasonably be expected to do so, the courts may infer that it has no good reason for reaching its conclusion, and act accordingly. (**Padfield**<sup>16</sup>; **Tata Cellular**<sup>25</sup>). Unless the Court comes to the conclusion, that the decision maker has not understood the law correctly that regulates his decision-making power, or when it is found that the decision of the decision maker is vitiated by irrationality, that too on the principle of "Wednesbury Unreasonableness", it would not be permissible for the High Court to interfere in the decision making process. (**Mahadeo Real Estate**<sup>30</sup>). The point is not that a thing is unreasonable in the legal sense merely because the Court thinks it is unwise. (**Tata Cellular**<sup>25</sup>; **G.B. Mahajan v. Jalgaon Municipal Council**<sup>50</sup>). The test is not what the Court considers reasonable or unreasonable, but a decision which the Court thinks

that no reasonable person could have taken, which has led to manifest injustice. (**Abdul Halim**<sup>33</sup>; **Mahadeo Real Estate**<sup>30</sup>).

143. In applying the test of irrationality (1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. (2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. (**R v. Barnet London Borough Council, exp Johnson**<sup>51</sup>; **Emma Hotels Ltd. v. Secretary of the State of Environment**<sup>52</sup>; **Tata Cellular**<sup>25</sup>).

144. If the decision-making body is influenced by considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the court will interfere. (**Tata Cellular**<sup>25</sup>; **Padfield**<sup>16</sup>). If the decision-making body comes to its decision on no evidence or comes to an unreasonable finding - so unreasonable that a reasonable person would not have come to it - then again the courts will interfere. (**Tata Cellular**<sup>25</sup>; **Associated Provincial Picture Houses Ltd.**<sup>22</sup>). If the decision-making body goes outside its powers or misconstrues the extent of its powers, then, too the courts can interfere. (**Tata Cellular**<sup>25</sup>; **Anisminic Ltd. v. Foreign Compensation Commission**<sup>53</sup>). If the body acts in bad faith or for an ulterior object, which is not authorised by law, its decision will be set aside. (**Tata Cellular**<sup>25</sup>; **Sydney Municipal Council v. Campbell**<sup>54</sup>).

145. While exercising the power of judicial review, the Court is more concerned with the decision making process, than the merits of the decision itself. While examining and scrutinizing the decision making process, it becomes inevitable to also appreciate the facts of a given case, as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Court of judicial review can reappreciate findings of facts depends on the grounds for judicial

review. If a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. To the limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker. (**Johri Lal**<sup>26</sup>). Judicial review is available in cases of misunderstanding or ignorance of an established and relevant fact. (**Tameside Metropolitan Borough**<sup>46</sup>).

146. Irrationality, which is a ground for judicial review is a facet of unreasonableness, and the Court would intervene where it is satisfied that no reasonable man, acting reasonably, could have arrived at the conclusion which the authorities, entrusted with the power, had arrived at. As noted hereinabove, failure to consider relevant aspects, or taking irrelevant aspects into consideration, is also a ground to interfere on the touchstone of unreasonableness.

147. The Minister of Human Resources and Development, Government of India had, in the letter addressed by her to the Chief Minister dated 28.06.2016, specifically referred to the collapse of the boundary wall because of landslides; and that the NIT after consulting experts, had informed MHRD that the site was prone to landslides, earthquake and cloudbursts. While expressing her opinion that the safety of the staff and students in the campus was a major concern, if a permanent campus was built there, the Minister suggested that an alternate suitable piece of land, having good civil infrastructure, be identified for a permanent campus.

148. Subsequently the Secretary, MHRD, Government of India, by his letter dated 12.07.2017, informed the Chief Secretary Government of Uttarakhand that the land at Sumari was found unsuitable as it was prone to landslides; and the safety of students and staff would be a constraint

concern. Despite taking note of the need to ensure the safety of students and staff, in its letter dated 12.07.2017, the Government of India, in its counter-affidavit dated 03.05.2019 filed before this Court, has stated that it had agreed, for location of the permanent campus at Sumari, “to end the impasse”. Safety of students and staff, which the Government of India had noted to be a constraint concern in its letter dated 12.07.2017, has been ignored in finalizing “Sumari” as the location for the permanent campus. The geo-technical survey carried out by the Geological Survey of India does not also indicate the safety of students and staff having been taken into consideration in making its recommendations that the land at Sumari is suitable.

149. While the need to ensure safety of the students and staff has been emphasized in the letter of the Secretary, Human Resource Development, Government of India dated 12.07.2017, what is evident from a bare reading of all the technical reports, recommending location of the permanent campus of the NIT at Sumari, is that the safety of students and faculty, for whose benefit the Institution is primarily established, has been completely ignored in all the reports.

150. As noted hereinabove, all the technical reports are guarded, and talk of further steps required to be taken to ensure that the buildings of NIT, Uttarakhand, to be constructed at Sumari, are safe. The earlier stand of the Government of India, as highlighted in the letters referred to hereinabove, was that the location at Sumari should be changed. What has led to a change of heart is not clear. While Mr. Abhijay Negi, learned counsel for the petitioner, insists that it is only because of a change in the Office of the Minister of Human Resource Development, the only reason furnished by the Government of India, in its counter-affidavit filed before this Court dated 03.05.2019, is that it had agreed for the permanent campus to be located at Sumari “**only to end the impasse**”. Decisions, even those falling within the realm of executive policy, cannot be taken in such a casual manner. Ending an impasse between the Centre and the State is no ground for the Government of India to agree for the permanent campus of

the NIT, Uttarakhand to be located at Sumari. Such a decision smacks of irrationality, and suffers from manifest arbitrariness falling foul of Article 14 of the Constitution of India.

151. Even otherwise, the decision to locate the permanent campus at Sumari was evidently taken by the Government of India before 03.05.2019 (when it filed its counter affidavit before this Court) and, consequently, it could not have had the benefit of the expert advice of the Geological Survey of India, for it is more than a month, after a decision was taken by the Government of India, that the Geological Survey of India had caused an inspection of the site in June, 2019, and had submitted its report thereafter. In any event, no material has been placed before this Court to show that the need to ensure the safety of the students and staff of the NIT was taken into consideration in finalizing Sumari as the location for the permanent campus of the NIT.

**(I) NEED FOR COURTS TO DEFER TO EXPERT OPINION:**

152. Reliance is placed by Mr. V.K. Kaparwan, learned Standing Counsel for the Central Government on **Akhil Bharat Gosewa Sangh and Ors. vs. State of A.P. and Ors**<sup>55</sup> to submit that expert decision cannot be interfered with under Article 226 of the Constitution of India; reliance placed on the earlier IIT, Roorkee report is of no avail, as IIT, Roorkee has no expertise in soil testing, landslide technology or geology; the earlier reports can no longer be relied upon, in view of the later GSI report; the inspection team of IIT, which submitted its report, consisted of Professors who did not have geo-technical expertise; the Geological Survey of India is an expert agency and its report is binding; it is the expert opinion of the GSI on which the Central Government has relied upon; the GSI report shows that 1/3<sup>rd</sup> of the area i.e. 100 acres is available for construction; the validity of this report has not been, and cannot be questioned by the petitioner in proceedings under Article 226 of the Constitution of India in view of the law declared by the Supreme Court in **Piara Singh and others vs. State of Punjab and others**<sup>56</sup>; it is only after taking into consideration this report, that the cost of construction, of a permanent NIT campus at Sumari, has

been subsequently revised vide Office Memorandum dated 13.03.2020; the Disaster Mitigation and Management Centre Report relates to Srinagar, and not Sumari; even during the disaster, which Uttarakhand had the misfortune to suffer in 2013, it was Srinagar, where the temporary campus of the NIT is located, which was adversely affected, and Sumari village was not.

153. It is true that the findings of expert bodies, in technical and scientific matters, would not, ordinarily, be interfered with by Courts in the exercise of their jurisdiction under Article 226 of the Constitution. (**Systopic Laboratories (Pvt.) Ltd. v. Dr. Prein Gupta and Ors.**<sup>57</sup>; and **Akhil Bhartiya Gosewa Sangh**<sup>55</sup>). Evaluation or assessment, of the relative merits of the studies and reports, is required to be undertaken by the Central Government, while exercising its powers under the Act, on expert advice. (**Systopic Laboratories (Pvt.) Ltd.**<sup>57</sup>). Where there is a conflict, between the opinion of two experts, the Court should normally accept the evidence of the expert whose evidence is corroborated by direct evidence of the case which, according to the Court, is reliable. (**Piara Singh**<sup>56</sup>).

154. Defer to the reports, of these expert bodies, we must. However, bearing in mind that deference does not mean that the plight of the students and the staff of NIT should be ignored by Courts, for even policy decisions must not fall foul of the provisions of Part III of the Constitution. The submissions put forth across the bar, regarding lack of expertise of IIT Roorkee, is not supported by any pleading or averment in the counter-affidavit filed by the Government of India. We see no reason, in such circumstances, to examine such contentions urged across the bar as we are not even certain whether the Central Government has any reservation on the competence of IIT Roorkee to undertake such an exercise.

155. In any view of the matter, if the decision taken, on the basis of the expert opinion, is ex-facie irrational, unreasonable and arbitrary, violating Article 14 of the Constitution of India, it is the obligation of Constitutional Courts to interfere, notwithstanding that it would, ordinarily, defer to expert opinion.

**(m) EXERCISE OF DISCRETION MUST ALSO SATISFY THE TEST OF REASONABLENESS:**

156. The choice of location of the permanent campus are, ordinarily, matters within the discretion of the Executive, be it the Centre or the State. The law, however, requires that a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. (**Associated Provincial Picture Houses Ltd.**<sup>22</sup>; **Padfield**<sup>16</sup>). He must have regard to matters to which the statute conferring the discretion shows that the authority exercising the discretion ought to have regard. The authority must not allow itself to be influenced by something extraneous and extra-judicial which ought not to have affected its decision. (**Padfield**<sup>16</sup>).

157. If he does not obey those rules, he may truly be said, and often is said, to be acting “unreasonably.” Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. (**Associated Provincial Picture Houses Ltd.**<sup>22</sup>; **Minister for the Civil Service**<sup>23</sup>). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If an administrative power is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (**Minister of Civil Service**<sup>23</sup>; **Johri Lal**<sup>26</sup>).

158. The principles governing the approach of the Court to executive discretion are as follows (1) Its function is to see that the authorities do not exceed their power. (2) The scope of review is determined by the language of the grant of power. (3) The decision can be impugned if it can be shown that the authority misdirected himself in law. (4) The duty of the concerned authority is to take such steps as are reasonably necessary to satisfy himself. (5) His decision may, depending on the circumstances, be open to challenge if he is shown to have misdirected

himself in fact on the material before him. Lastly, reasonableness is a matter of fact and degree, so long as there is some evidence of it. [**Tameside Metropolitan Borough**<sup>46</sup>; **Lord Hailsham of St. Marylebone L.C. in In re W. (An Infant)**<sup>48</sup>].

159. A Court may hold that it can interfere if the competent authority has misdirected itself by applying a wrong legal test to the question before it, or by misunderstanding the nature of the matter in respect of which it has to be satisfied. Such criteria are sufficiently elastic to justify either a broad or a narrow test of validity. A Court may state its readiness to interfere if there are no grounds on which a reasonable authority could have been satisfied as to the existence of the conditions precedent. (**S.A. de Smith, Judicial Review of Administrative Action, 3rd ed. (1973), p. 320; Tameside Metropolitan Borough**<sup>46</sup>).

160. While judicial review of exercise of discretion is not excluded, the court can declare the directions unlawful only if there be proved to exist one or other of the following situations: bad faith on the part of the authority, misdirection in law, taking account of irrelevant matters or omitting to consider relevant matters, and finally a situation where the authority has taken a view, which on the material and the information available to him, no reasonable man could have taken. The Court must assume the discretion to have been lawfully exercised, until the contrary be shown. It must always bear in mind that the discretion is that of the authority, and not of the Court. (**Tameside Metropolitan Borough**<sup>46</sup>). An order passed by an administrative authority, exercising the discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal. (**Johri Lal**<sup>26</sup>).

161. The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament has appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those

bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. 'With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority'. (**G.B. Mahajan**<sup>50</sup>; **Tata Cellular**<sup>25</sup>).

162. Where Parliament has conferred a discretion on an authority so that it can be used to promote the policy and object of the enactment, construction of which is a matter of law for the Court, the discretion conferred on the authority is not unlimited and, if it appears that the effect of his refusal to exercise discretion, in a lawful manner, is to frustrate the policy of the Act, the Court is entitled to interfere by an order of mandamus. (**Hochtief Gammon v. State of Orissa**<sup>58</sup>; and **K S. Jagannathan**<sup>10</sup>).

163. It is only if the Central Government had exercised its discretion taking into consideration relevant factors, and eschewing those which are irrelevant, would exercise of judicial restraint have been in order. The relevant fact, which the Central Government failed to take into consideration, was the safety of the students and the staff for whose benefit, primarily, the permanent campus of the NIT is established. The admission by the Central Government that the decision to locate the permanent campus at Sumari, is “**only with a view to end the impasse**”, is an irrelevant factor which weighed with it in exercising its discretion to locate the permanent campus of the NIT, Uttarakhand at Sumari. Such exercise of discretion is not immune from judicial review within the narrow parameters of “illegality” and “irrationality”.

(n) **IT IS NOT NECESSARY TO EXAMINE, APPLICATION OF THE “HARD LOOK DOCTRINE” OR “CONSTITUTIONAL**

**REVIEW BASED ON MORAL REASONS”, IN THE PRESENT CASE:**

164. Mr. Abhijay Negi, learned counsel for the petitioner, would, while relying on “**Interest Groups in American Public Law**”, (Chapter V - Fraction and Administrative Law) by **Cass R. Sunstein** (Professor of Law, University of Chicago, A.B. Harvard University), request this Court to apply certain doctrinal innovations in Administrative Law called the “Hard-Look doctrine” which requires agencies to give detailed explanations for their decisions; justify departures from past practices; allow participation in the regulatory processes by a wide range of affected groups; and to consider reasonable alternatives, explaining why they were rejected. This doctrine enables the Court to also scrutinize the decision on merits, and these devices are to be understood as a form of means-ends scrutiny. Learned counsel would also rely on an article on “Constitutional Rights and Constitutional Review”, by Robert Alexy, to submit that the justification of constitutional review can also be based on moral reasons.

165. In this context, it is useful to note that even proportionality has been held not to be a free-standing ground of judicial review beyond regarding it as a component of Wednesbury unreasonableness, for such recognition would entail, according to the judicial review Court, a fact-finding or appellate, rather than a supervisory jurisdiction. (**REGINA**<sup>21</sup>). Acceptance of “proportionality” as a separate ground for seeking judicial review, rather than a facet of “irrationality”, can easily and speedily lead to courts forgetting the supervisory nature of their jurisdiction and substituting their view of what was appropriate for that of the authority whose duty it was to reach that decision. (**REGINA**<sup>21</sup>).

166. As we are satisfied that the decision of the respondents, to locate the permanent campus of NIT, Uttarakhand, at Sumari suffers from the vice of irrationality and unreasonableness, falling foul of Article 14 of the Constitution of India, it is unnecessary for us to take in aid the newly propounded doctrines which Mr. Abhijay Negi, learned counsel for the petitioner, has commended for our consideration.

167. The least that is expected from the Central Government in this regard is for it to satisfy itself, based on expert advice, that Sumari, as the location for the permanent campus of NIT, Uttarakhand, satisfies the requirement of ensuring safety of the students and the faculty who would be residing in the said campus, after construction of buildings thereat is completed. While it is not open to the High Court, in the exercise of its powers of judicial review, to substitute its views for that of the Central Government, the Court can, on being satisfied that the decision, to locate the permanent campus at Sumari, **“only to end the impasse”**, is irrational and arbitrary, direct the Government of India to re-examine the matter from the safety angle, seek expert opinion in this regard, and then take a conscious decision on whether Sumari, as the location for the permanent campus of NIT, Uttarakhand, satisfies the minimum safety norms required to house the students and the faculty of NIT.

168. In the light of what we have observed hereinabove, we hold that the decision of the Government of India, to locate the permanent campus of NIT, Uttarakhand at Sumari, **“only with a view to end the impasse”**, is irrational, unreasonable, arbitrary and in violation of Article 14 of the Constitution of India, as it is a decision which is outrageous in its defiance of logic, and no reasonable person, who had applied his mind to the question to be decided, could have arrived at such a conclusion. The said decision is, accordingly, quashed. The Central Government shall, after obtaining expert opinion in this regard, examine afresh, from the safety angle, the suitability of Sumari as the location for establishing the permanent campus of NIT, Uttarakhand, and satisfy itself that construction of the permanent campus of NIT, Uttarakhand at Sumari would not, in any manner, endanger the lives and safety of the students and staff who would be residing in the said campus. The Central Government shall, thereafter, take a considered decision whether or not the permanent campus of NIT, Uttarakhand should be established at Sumari, or should be established at any other suitable location in the State of Uttarakhand. Since this issue has remained unresolved for the past decade, and NIT, Uttarakhand does not

still have a permanent campus of its own, we direct the Government of India to take a considered decision in this regard at the earliest, and in any event within four months from the date of receipt of a certified copy of this order.

**V. NEAR FATAL ACCIDENT SUFFERED BY MS. NEELAM MEENA, A STUDENT OF NIT, UTTARKHAND:**

169. The petitioner has narrated the tragic incident, which took place at 3.30 PM on 3<sup>rd</sup> October, 2018, when Neelam Meena Uhidwas, a native of Dausa, Rajasthan and a student of NIT, Uttarakhand, was commuting by walk from her hostel, to attend her laboratory classes, (ie one part of the temporary campus to another) on the National Highway, (as both these sites are not internally interconnected and the only mode of commutation is by travelling on the National Highway) was hit by an over-speeding car resulting in her suffering serious injuries. As the Srinagar Base Hospital lacked necessary medical facilities, she had to undergo the trauma of having to travel 106 kilometers to the All India Institutes of Medical Sciences at Rishikesh. This accident resulted in her backbone being broken, and the lower part of her body being completely paralyzed. It is pursuant thereto that the Union Minister of Human Resource Development had, after flagging this tragic accident of two girl-students of NIT Srinagar being hit by an over-speeding vehicle, urged the Chief Minister to consider shifting the temporary campus from its current location to a better location, where there was access to medical facilities.

170. The future of a young bright under-graduate student, of a reputed Institution like the NIT, has been completely destroyed as a result of the hit and run accident. The young girl continues to suffer the agony of a broken spine, and the lower part of her body being completely paralyzed. The dreams she would have had, of a bright future as an Engineer, lie completely shattered.

171. While the respondents cannot be held directly responsible for this hit and run accident, they cannot absolve themselves of all blame either, for such accidents could have been easily avoided, if greater urgency and

concern had been shown by respondents in providing an internal pathway for students to commute from one segment of the temporary campus of the NIT to another. It is because the under-graduate students, of NIT, Uttarakhand at Srinagar, had to (and are still required to) commute on the National Highway to attend classes, that incidents like these happen. No money can compensate for the pain and suffering which Ms. Neelam Meena must be undergoing. It is true that NIT, Uttarakhand bore the expenses incurred for her treatment at AIIMS, Rishikesh, and has paid her Rs. 25.00 lacs as compensation. We are satisfied, however, that the obligation of the respondents does not end there, and the compensation of Rs. 25.00 lacs, paid to her earlier, would not suffice.

172. We, therefore, direct the Central Government to provide necessary funds to NIT, Uttarakhand to enable the latter to reimburse Ms. Neelam Meena, the entire expenditure incurred by her for the continuous medical treatment of her spinal chord injury and associated paralysis of her lower limbs. The aforesaid benefit of reimbursement of medical expenses shall be extended by NIT, Uttarakhand throughout Ms. Neelam Meena's life time. In addition to the compensation of Rs. 25 lacs which has already been paid, both the Government of India and NIT, Uttarakhand shall pay Ms. Neelam Meena, in addition, another sum of Rs. 25.00 lacs as compensation for the trauma she is undergoing as a result of the near fatal injuries she has suffered. Payment, of additional compensation of Rs. 25 lacs, shall be made to Ms. Neelam Meena within four months from the date of production of a certified copy of this order. She shall be reimbursed the amount incurred by her, for her medical treatment, within one month of her making a claim for such payment.

## **VI. CONCLUSION:**

173. In the light of the observations made hereinabove, we direct:-

(1) The Government of India, at the earliest and in any event within three months from the date of production of a certified copy of this order, to consider the detailed project report submitted regarding provision of infrastructural facilities at the temporary campus of NIT,

Uttarakhand at Srinagar, and release the funds required for implementation thereof. The NIT, Uttarakhand shall, on receipt of funds from the Government of India, forthwith initiate steps to invite bids for construction of buildings, and for providing infrastructural facilities, in terms of the detailed project report approved by the Government of India. The NIT, Uttarakhand shall ensure that construction activities are undertaken, and are completed at the earliest, and in any event before the commencement of the academic year 2021-22 ie on or before 01<sup>st</sup> July, 2021.

(2) The decision of the Government of India, conveying its consent to locate the NIT, Uttarakhand permanent campus at Sumari with a view “to end the impasse”, suffers from the vice of irrationality, unreasonableness and arbitrariness, and falls foul of Article 14 of the Constitution of India. The said decision is, accordingly, quashed. The Government of India shall, after seeking expert opinion, re-examine the matter and satisfy itself that the location, of the permanent campus of NIT, Uttarakhand at Sumari, would not, in any manner, endanger the life and safety of students, faculty and staff of NIT, who would be residing thereat. It shall, thereafter, take a considered decision on whether the permanent campus of NIT, Uttarakhand should still be located at Sumari, or should be shifted elsewhere within the State of Uttarakhand. The entire exercise, culminating in a considered decision being taken by the Government of India in this regard, shall be completed with utmost expedition and, in any event, within four months from the date of production of a certified copy of this order.

(3) The Government of India shall provide necessary funds to NIT, Uttarakhand to enable the latter to reimburse the medical expenditure which Ms. Neelam Meena would have to incur on account of her spine injury, and the consequent paralysis of the entire lower part of her body. This facility of medical reimbursement shall be provided to Ms. Neelam Meena throughout her life. Both the Government of

India and NIT, Uttarakhand shall, in addition to the sum of Rs.25.00 lacs paid to Ms. Neelam Meena earlier, pay her a further sum of Rs.25.00 lacs to compensate for the trauma she must be undergoing as a result of such injuries. Payment of this additional sum of Rs.25.00 lacs shall be made to Ms. Neelam Meena at the earliest, and in any event within four months from the date of production of a certified copy of this order. She shall also be reimbursed the amount incurred by her, for her medical treatment, within one month of her making a claim for such payment.

174. While Mr. Abhijay Negi, learned counsel for the petitioner, insists on symbolic costs of at least one rupee for the apathy and indifference exhibited by the official respondents on all these issues, it is unnecessary for us to resort to symbolic gestures as we have dealt with the issues on hand, and have substantially granted the reliefs sought for by the petitioner. The Writ Petition is, accordingly, disposed of. However, in the circumstances, without costs.

**(R.C. Khulbe, J.)**  
27.07.2020

**(Ramesh Ranganathan, C.J.)**  
27.07.2020

NISHANT